

T H E
Office and Authority
O F A
Justice of Peace :

Collected out of all the Books, whether of
Common or *Statute Law*, hitherto written on that
Subject.

Shewing also the DUTY of Constables, Commissioners
of Sewers, Coroners, Overseers of the Poor, Surveyors of the
Highways, Church-wardens, and other Parish Officers :

Digested under ALPHABETICAL TITLES.

To which are added

**English Precedents, of Indictments, War-
rants, &c.**

Very useful for Justices of the Peace, Coroners, Sheriffs,
Clerks of the Assizes, and of the Peace, and of all others
concern'd in such Matters.

The **Twelfth Edition**, corrected, amended, and continued
down to this present Year ; by adding all the Statutes and
adjudg'd Cases, many of which were never before printed. With
an Introduction, shewing *The Antiquity and Authority of Justices
of the Peace, by the Common and Statute Law* ; also a large
Appendix and *Two Tables*, one of the General Heads, and
the other of the Precedents under each Head.

By **W. NELSON**, of the *Middle Temple*, Esq;

In Two Volumes.

V O L. I.

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T H E P R E F A C E.

THE Office of a Justice of Peace did at first consist chiefly in suppressing of Riots and unlawful Assemblies, it being usual in former Times, for Men of Estates to give Liveries every Year to rude and disorderly People, who were not their Menial Servants; and this was to engage them in all their Quarrels for that Year, otherwise they were to forfeit double the Value of those Liveries.

The Justices of Peace in those Days had Power by several Statutes to punish those Offences; which was done sometimes at the Quarter-Sessions, and often upon View, or upon Proof by Witnesses.

But their Authority being much enlarged, during the Civil Wars between the Houses of York and Lancaster, and there being no Directions for them in the Execution of their Office, but such as lay dispersed in a Multitude of Statutes; it then became necessary to write something in a peculiar Manner relating to their Office; which was first attempted by Mr. Marrow, in the Reign of King Henry VII. and published by him at that Time.

About twenty Tears afterwards, Sir Anthony Fitzherbert, who was a Judge of the Common Pleas, and also another wise Man, (but who he was, Mr. Crompton doth not tell us) collected some other Materials for their Instruction; both which were published in the Reign of King Henry VIII.

The P R E F A C E.

The Judge's Book was about sixty Tears afterwards enlarged by Mr. Crompton, and was then in so great Esteem, that the second Impression of it was sold in less than three Tears after the first was published.

And yet Mr. Lambard, who was a learned Man, and certainly a very competent Judge, did not think that Book a sufficient Guide to those Magistrates; because, about twenty Tears after it was published, he wrote another Treatise on the same Subject.

Upon this Foundation, Mr. Dalton compiled his Country Justice, which appears very plainly throughout that whole Book; for in many Places it is no more than a Repetition of what was written by them; and because he would not alter the Sense, he has often transcribed it Word for Word.

Of this Nature are all the Books publish'd since that Time, relating to this Matter, which are transcribed from each other without Order and Method; and therefore I shall take no further Notice of them, but give the Reader some short Account of the following Sheets.

And first, I can give no better Reason for my Undertaking this Work, than Mr. Dalton alledged several Tears since; who tells us, That the Expiration and Discontinuance of many Statutes, put him upon composing his Book; and I think the Repeal of many Old, and the Additions of such a vast Number of new Statutes since he wrote, may reasonably pass for an Excuse as to this Matter.

And as to the Book it self, I think nothing material is omitted therein, which hath hitherto been written upon this Subject; and to avoid Repetitions, I have collated the Whole under several Heads in an Alphabetical Manner.

And since Justices of the Peace are now enabled by several Statutes to hear and punish Persons out of Sessions, (which was rarely done in former Days, but in Cases of Force and Riots,) I have

under

The Lord Chancellor (or Lord Keeper of the Great Seal), the Lord High Steward of England, the Lord Marshal, and High Constable of England, the Lord Treasurer of England, and every Justice of the King's Bench, as also the Master of the Rolls, as such, have the Conservation of the Peace over all the Realm. The Chamberlain of Chester is Judge of the Court of Exchequer there, which hath the Jurisdiction of a Court of Chancery, and is by Virtue of his Office a Conservator of the Peace there.

The great Officers of State.

Justices of the King's Bench, Master of the Rolls.

Chamberlain of Chester.

The Justices of the Court of the Common Pleas, the Barons of the Exchequer, and the Justices of Assize and Gaol-delivery; also the Steward of the Sheriff's Tourn, the Steward of a Leet, and the Steward of a Court of Piepowder, are Conservators of the Peace within their several and respective Jurisdictions and Courts; for every of them may commit him that shall make an Affray in their Presence, whilst they be in Execution of their Offices, for that these are Courts of Record.

Justices of the Common Pleas, Barons of the Exchequer, Stewards of the Sheriff's Tourn, of a Leet, and of a Court of Piepowder.

And so if any other Contempt or Disturbance to the Court shall be committed in any of the said Courts, or in any other Court of Record, the Judge (or Steward) there may impose upon such Offenders a reasonable Fine.
Br. Leet 14.—36.

It is said the Sheriff cannot act as a Justice of the Peace during the Time of his Shrievalty (of which more hereafter); and yet by the Common Law, he is a Principal Conservator of the Peace in every Place within his County. And (upon Request to him made) he may command another to find Surety of the Peace, and may take the same by Virtue of his Office, without any Writ of *Supplicavit* to him directed; and this seems to be by Virtue of

The Sheriff.

of these Words in his Commission, *Commisimus vobis custodiam Comitatus* (We have committed to you the Care of the County).

Coroners.

Coroners also (by the Common Law) are Conservators of the Peace within the County, where they are Coroners; and so are High Constables of the Hundreds, within their several Hundreds, and may at their Petty Sessions, for any Affray made in Disturbance of their Court, imprison the Offenders. *Co.*

II. 43, 44.

And Constables, &c. are Conservators of the Peace.

Also every Petty Constable, Borsholder, Thirdborough, Tithingman, and Headborough within the Limits of their several Towns, are Conservators of the Peace (at the Common Law) by Virtue of their Office.

Constable's Authority greater than the Borsholder, &c.
39 Eliz. c. 4.

But yet the Office of a Constable is distinct, and of greater Authority and Respect than those other, as appears by the Statute of the 39 of *Eliz. cap. 4.* where the Tithingman or Headborough is to be assisted in the Punishment of Rogues, with the Advice of the Minister and one other of the Parish, whereas the Constable alone of himself, as well as the Justices of the Peace, may appoint or cause Rogues to be punished. See *Lambard of the Duty of Constables, pag. 51.*

And he may commit for an Affray in his Presence.
But see after.

If any Man shall make an Affray or Assault upon another in Presence of the Constable or Borsholder; or if any Man in the Presence of the Constable shall threaten to kill, beat, or hurt another, or shall be ready to break the Peace; in every of these Cases the Constable or Borsholder may commit the Offenders to the Stocks, or to some other safe Custody for the present (as his or their Quality requireth), and after may carry them before some Justice of Peace, (or to the Gaol) until they shall find Surety for the Peace.

There

There is a notable Report of *Skarrett's* Skarrett's Case, Trinity-Term 35 Eliz. Roll 1458.
 Case, in *Trinity-Term* in the 35th Year of Queen *Eliz.* Roll. 1458. Where *Skarrett* brought his Action of False Imprisonment against one *Hammer*, for arresting and imprisoning him, &c. The Defendant, to the Imprisonment pleaded: That he was High Constable of the Hundred of *E.* in the County of *S.* and that the Plaintiff made an Affray within the said Hundred, upon one *H. W.* who presently came and told him thereof, and swore upon a Book, that he was in Fear of his Life by the other; whereupon the Defendant came to the Plaintiff, and arrested and imprisoned him, until he had found sufficient Sureties of the Peace; upon which the Plaintiff demurred. And it was adjudged that the Plea of the Defendant was insufficient; *First*, For that he was not present at the Assault and Affray; *Secondly*, For that he was the High Constable of the Hundred, and not Constable of the Town. In the Argument of which Case, *Anderson*, Chief Justice, held Constables to be Conservators of the Peace at the Common Law, and still so to be, and that they ought to preserve the Peace, as much as in them lieth; but that, said he, was by parting of Men which they should see breaking of the Peace, and to carry them before a Justice to find Sureties for the Keeping thereof; but to take Sureties himself, the Constable cannot. And those which hold, that he may take Surety, cannot tell what Surety that should be; for he cannot take a Recognizance nor Bail, for he is no Officer of Record; and if he shall take an Obligation, how the same shall be certified, and into what Court he said he knew not; and that it would be very inconvenient to give such Authority to every Constable.

But

10 E. 4.

But by the three Judges, namely, *Walmesley*, *Owen* and *Beaumont*; Altho' a Constable cannot take Surety for the Peace by Recognizance or Bail, yet he may take an Obligation, according to the Book of the 10th of *Ed. IV.* And if the Affray be in their Presence, they are Conservators of the Peace, and therefore may use such Means for keeping it, by taking Surety by Obligation: And that before Justices of Peace were, the Peace was preserved, and that by the Constables. And that the Statute, which ordained Justices of Peace, did not take away the Authority of the Constable. But the Constable hath no Authority to take an Oath of the Party that is in Fear, &c. Whereunto *Anderson*, Chief Justice, replied, saying, I doubt not but that at the Common Law the Peace was kept, but that was to be done in such Manner as the Law appointed, and that is, by Writ out of the Chancery or King's Bench.

And yet another Author, supposed to be *Sir Thomas Egerton*, afterwards Lord Chancellor, saith, That by the Common Law the Constable's Office was to arrest the Parties that had broken the Peace, or were (in a Fury) ready to break the Peace, to wit, If either he had seen it himself, or were truly informed thereof by others, or upon the Confession of the Party who had freshly broken the Peace: And that all such Offenders, the Constable might imprison in the Stocks, or in his own House, as the Quality required, until they had been bound by Obligation, with Sureties to the King to keep the Peace from henceforth; which Obligation was to be sealed and delivered to the Constable to the Use of the King; and the Constable was to send it into the Exchequer, or Chancery, from whence

Process should be awarded to levy the Debt, if the Peace be broken. *Finch, fol. 127.*

These Conservators of the Peace are only to meddle with Affrays, Assaults, and Batteries, or Threatnings to break the Peace, done in their Presence; but not with Riots, or Forcible Entries or Detainers; and if any of them, being required to see the Peace kept, shall be negligent therein, they may be indicted, and fined for the same; if they have committed or bound over any Offenders, they are to send to, or be present at, the next Sessions of Peace or Gaol-delivery, to object against them.

But for the High Constables, and Petty Constables, although they have (by the Common Law) the Charge of the Peace, as incident to their Office; yet their Offices and Authority began not long before the Time that Justices of the Peace were ordained. Whereas the Sheriffs, Coroners, Stewards of the Sheriff's Tourn, of the Leet, and of the Court of Piepowders, and the Justices of all higher Courts, were long before the Conquest. See *Co. 9.*

There were other Persons who (by the Common Law) had the ordinary Keeping of the Peace, and were named *Custodes Pacis* (Keepers of the Peace), whereof some were by Election (in full County), and some by Tenure, as you may see in *M. Lambard 16, 17.* There were others which were called to this Office by the King's Writ to continue for the Term of their Lives, or at the King's Pleasure; but these are now all ceased.

It is said that *William the Conqueror* ordained Justices of the Peace about the Year 1070, in the fourth Year of his Reign; yet the Justices of Peace had not their Beginning till almost

Justices of the Peace first appointed by Statute Law.

- almost Three hundred Years after that Time, to wit, in the Year 1327. at which Time Justices or Commissioners of the Peace were first
- 1 E. 3. c. 16. created by the Statute 1 *Edw. 3. cap. 16.* by which Statute it was ordained, That in every Shire of the Realm certain Persons should be assigned (by the King's Commission) to keep the Peace. And their Authority since that Time hath been very much enlarged by the
- 4 E. 3. c. 2. Statutes 4 *Edw. 3. cap. 2.* 18 *Edw. 3. cap. 2.*
 18 E. 3. c. 2. and 34 *Edw. 3. cap. 1.* and by many other
 34 E. 3. c. 1. Statutes almost in every King's Reign. And by the said Statute of 34 *Edw. 3. cap. 1.* They were first enabled to hear and determine (at the King's Suit) all Manner of Felonies and Trespasses: And each County hath now its proper Commissioners for the Peace; whereas before, the Commissions were sometimes made jointly to sundry Persons over sundry Shires; those in every Shire named of the *Quorum* ought to be resident within the same Shire, except Lords named in the Commission of the Peace, and also except Justices of the one Bench, and of the other, the Chief Baron of the Exchequer, Serjeants at the Law, and the King's Attorney; for the Time that they are intending and occupied in the King's Courts, or otherwise in the King's Service. 2 *Hen. 5. cap. 4.*
- 2 H. 5. c. 4. And by the Statute of the 2d of *Hen. 5.*
 2 H. 5. c. 1. *cap. 1. stat. 2.* Justices of Peace to be made
 stat. 2. within the Counties of *England* shall be made of the most sufficient Persons dwelling in the same Counties by the Advice of the Chancellor, and of the King's Council, without taking other Persons dwelling in foreign Countries to execute such Office, except the Lords, and the Justices of Assizes named and to be named by the King and his Council, and except

cept all the King's Chief Stewards of the Lands and Seigniories of the Dutchy of *Lancaster* in the North Parts, and in the South for the Time being; but the Statute of 36 *Ed. 3. c. 12.* 36 *E. 3. c. 12.* is the first Statute that nameth them Justices of the Peace.

They ought to be of Ability of Body and Estate, by an old Statute, to wit, 18 *H. 6. c. 11.* 18 *H. 6. c. 11.* They (except they were Lawyers) ought to have 20 *l.* a Year, and a certain Person was indicted for Acting in the Commission of Peace contrary to the Form of that Statute, he not having 20 *l.* a Year, and not being a Man of the Law; but it not being alledged that he had not 20 *l.* a Year at the Time he sat, and acted as Justice of the Peace, the Indictment was quashed. *Their Qualification was 20 l. a Year.*

At this Day the Qualification is 100 *l.* a Year, made so by a late Statute, to wit, the 5th of *Geo. 2. c. 18.* the Abstract of which you have as follows: 5 *Geo. 2. c. 18.*

That after the 25th of *March 1733.* No Person shall be capable of being a Justice of the Peace, or to act as such, for any County within *England* or *Wales*, who shall not have an Estate of Freehold or Copyhold to and for his own Use and Benefit, in Possession for Life, or for some greater Estate in Law or Equity, or an Estate for Life, or for a certain Term originally created for 21 Years or more, in Lands, Tenements or Hereditaments, lying in *England* or *Wales*, of the clear yearly Value of One hundred Pounds, above what will satisfy all Incumbrances affecting the same. *But now is 100 l. a Year.*

No Attorney, Solicitor or Proctor, in any Court whatsoever, shall after 25 *March 1733,* be capable of continuing to be a Justice of the Peace within *England* or *Wales*, during the Time

Time he shall continue in such Business and Practise.

If any Person, not qualified as this Act directs, shall, after 25 *March* 1733, accept or take upon himself the Office of a Justice of the Peace, or do any Act as such, the Person so offending shall forfeit One hundred Pounds for every such Offence, one Moiety to the King, the other to the Informer, to be recovered by Action of Debt, &c. and but one Imparlance shall be allowed.

Nothing in this Act contained shall be construed to extend to any City or Town, being a County of it self, or to any other City, or Town, *Cinque Port*, or Liberty, having Justices of the Peace within their respective Limits and Precincts by Charter, Commission, or otherwise; but in every such City, Liberty, and Place, such Persons may be Justices of the Peace, and in such Manner only as they might have been, if this Act had not been made.

Nor shall any Thing in this Act contained extend to incapacitate any Peer or Lord of Parliament, or the eldest Son or Heir apparent of any Peer or Lord of Parliament, or of any Person qualified to serve as a Knight of a Shire by the Act to secure the Freedom of Parliaments, to be a Justice of Peace for any County, or to act as such.

Nor shall this Act extend to exclude the Officers of the Board of Green-cloth from being Justices of Peace within the Verge of his Majesty's Palaces, or to exclude the Commissioners and Principal Officers of the Navy, or the two Under Secretaries in each of the Offices of Principal Secretary of State from being Justices of Peace for such maritime Counties and Places, where they usually have been Justices of Peace.

Nor

Nor shall this Act extend to any of the Heads of Colleges or Halls in the Universities of *Oxford* and *Cambridge*, but they may be Justices of Peace in the Counties of *Oxford*, *Berks* and *Cambridge*, and the Cities and Towns within the same, and execute the Office thereof as fully and freely as heretofore they have lawfully used to do.

They are called Justices (of the Peace) because they are Judges of Record, and withal to put them in Mind (by their Name) that they are to do Justice (which is to yield to every Man his own, according to the Laws, Customs, and Statutes of this Realm) without Respect of Persons.

They are Judges of Record.

They are named also Commissioners of the Peace, because they have their Authority by the King's Commission; and are appointed by the King to be Justices within certain Limits for the Conservation of the Peace, and for the Execution of divers Things comprehended within their Commission, and within divers Statutes committed to their Charge, and as aforesaid are Judges of Record, upon whose Report and Testimony the Law very much reposeth itself.

He is made under the Great Seal of Great Britain, which is a Matter of Record, and every Justice of Peace hath judicial Power given unto him by the Commission, to wit, in the first *Assignavimus* (we have assigned or appointed); and by some Statutes they have judicial Power, for they may make a Record of a Force by them viewed, and may thereupon fine and imprison the Offenders; one Justice of Peace in some Cases, may hear and determine Offences, and punish an Offender as convict upon his own View, or upon the Confession of the

Made under the Great Seal.

The INTRODUCTION.

the Offender, or upon Examination and Proof of Witnesses.

Should his Warrant exceed his Authority, it is not disputable by the Constable, or other inferior Officer, but must be obeyed; but this is to be understood where the Justice hath Jurisdiction of the Cause, for which he hath granted his Warrant; for otherwise the Constable or other Officer seemeth punishable.

Every Justice may take a Recognizance (for the Peace, &c.) which is a Matter of Record, and which none can do but a Judge of Record. *Br. Recogn. 8 & 14.*

And their Testimony is of great Force.

His Record (or Testimony) in some Cases is of as great Force, as an Indictment upon the Oath of twelve Men, and in other Cases greater; he may make out Process upon Indictments, or Informations against Offenders, &c. and that in some Cases out of their Sessions.

18 E. 3. c. 2.

By the Statute of 18 *Ed. 3. c. 2.* Two or Three of the best of Reputation in the Counties shall be assigned Keepers of the Peace by the King's Commission, and at what Time need shall be, the same with other wise and learned in the Law shall be assigned by the King's Commission to hear and determine Felonies and Trespasses done against the Peace in the same Counties, and to inflict Punishment reasonably according to the Law, and Reason, and the Manner of the Deed. And by the 34th of the same King *Ed. 3. c. 1.* In every County of *England* shall be assigned for the Keeping of the Peace, one Lord, and with him three or four of the most worthy in the County, with some learned in the Law, and they shall have Power to restrain the Offenders, &c.

34 E. 3. c. 1.

12 R. 2. c. 10.

And by the Stat. of 12 *Ric. 2. c. 10.* it is ordained, That in every Commission of the Justices of the Peace, there shall be assigned but six

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fix Justices, (with the Justices of Assize) and that they shall keep their Sessions in every Quarter of the Year at least, and by three Days, if need be, each taking for his Wages 4 s. the Day for the Time of the said Sessions, and their Clerk (of the Peace) 2 s. of the Fines and Amerciaments rising and coming of the same Sessions, by the Hands of the Sheriffs. And afterwards by the Statute of the 14 of the said King Ric. 14 R. 2. c. 11.

2. c. 11. it was ordained, That there should be eight Justices of Peace assigned, besides the Lords, and that the Estreats of the said Justices should be doubled, but no Lord should take Wages for Sitting at the Sessions. And by the 17 of the same King, c. 10. Two Men 17 R. 2. c. 10. of the Law shall be assigned in every County.

By the Stat. of 5 Will. 3. c. 4. The King by 5 W. 3. c. 4. his Commission under the Great Seal may constitute such Number of Justices of Peace in Wales, as he shall think convenient; and the Persons thus constituted shall have as full Power to execute the Office of a Justice of Peace, as any other Justice might have done before the making that Act.

The constituting Justices of Peace is inherent, and inseparable from the Crown, and because this amongst others had been severed to the Diminution of the Royal State, and the Hindrance of Justice, as appears by the Stat. 27 Hen. 8. whereby it was enacted, That no Person should have Authority to make any Justices of Peace, but only the King, his Heirs and Successors, by their Letters Patent; nor was, nor is his Power to be delegated, for the King cannot grant a Man Power to make Justices of the Peace. *Justices are to be appointed by the Crown.*

Justices of Peace at this Day are of three *And are of three Sorts* Sorts, and are appointed or created, either by Act of Parliament; as the Bishop of Ely and his

By Act of Parliament,

By Patent.

his Successors, and their temporary Stewards of the Isle of *Ely* (for the Time being); the Archbishop of *Tork*, and the Bishop of *Durham*, and their Successors, and their Temporal Chancellors, &c. or by Grant made by the King by his Letters Patent under the Great Seal, as Mayors, and the chief Officers in Corporations; and these are not revocable at the King's Pleasure, (as the Commission of the Peace is) but they shall continue and enjoy their Jurisdiction according to their Letters Patent; and therefore if the King granteth to a Mayor or other Head Officer of a City or Corporate Town, and to their Successors, to be Justices of Peace in their City or Town, and after maketh out Commission of the Peace to others there, yet the Authority and Jurisdiction of the Mayor, &c. remaineth good, unless repealed by due Course of Law, for that it was granted to them and their Successors; and such Justices of Peace by Grant or Patent have thereby the same Power, as the Conservators of the Peace had by the Common Law; but if the Grant be made to such as are not learned in the Law; yet if it is to keep the Peace, &c. or to inquire only, this is a good Grant; and if the Grant is made to hear and determine, this is a void Grant, (as it is said) unless some one learned in the Laws be also joined with the other in the Commission; and then such a Commission made to hear and determine is good in Law. For in all Cases where the Commission or Grant is to hear and determine, it is meet that some, or one at the least, should be learned in the Laws of this Realm. See the Statutes 18 E. 3. c. 2. 13 R. 2. c. 7. and 17 R. 2. c. 10.

And by Commission.

And the third Sort of Justices of Peace are by Commission (under the Great Seal of *Great Britain*); and these, as before-mentioned, are appointed

appointed by the Discretion of the Lord Chancellor, &c. And yet the Justices of Peace within the County Palatine of *Lancaster* are to be made by Commission under the Seal of the said Dutchy, by the Statute of 27 *H. 8. c. 24.*

27 *H. 8. c. 24.*

And as these Commissioners of the Peace are appointed or created by three different Means, so altho' their Authority doth determine by divers Means, yet most usually by three Means; either by the Death of the King, or by his Resignation of his Crown: For by the Commission he maketh them *Justiciarios nostros* (our Justices) so that he being once dead, or having given over his Crown, they are no more his Justices, and the Justices of the next Prince they cannot be, unless it shall please him afterwards so to make them. *Lamb. 71. Dyer 165. a.*

As they are appointed three Ways,

So their Authority ceases by three Ways; By Death of the King; By his Resignation.

And although after the Death of a King of *England*, his Successor by Proclamation signifies, That all in judicial Places, as Justices of Peace, &c. shall continue and exercise their Offices; yet it is said not to be safe for them to act without a new Commission, as was done 1 *Car. 1.* touching the Justices at *Westminster*, *Cro. 1. c. 1.*

But now by the Stat of 1 *Ann. c. 8.* which recites 7 *Will. 3. c. 27.* That no Commission Civil or Military should cease at the Demise of the King, his Heirs or Successors, but should continue for six Months, unless sooner superseded; now for explaining the same, it is (among other Things) enacted, That the Justices of the Peace may proceed at their Sessions, as they might have done, if his said late Majesty King *William* the Third were living, but as her Majesty's Justices, and in her Name, and the like after the Demise of the Queen, her Heirs or Successors, and such Commissions shall continue in full Force for the Space of six

1 *Ann. c. 8.*
recites 7 *W. 3. c. 27.*

Months next ensuing, notwithstanding any such Demise, unless superseded by her Majesty, her Heirs or Successors.

At or by the King's Pleasure, either in express Words, or by his Writ under the Great Seal, or by *Supersedeas*; but the *Supersedeas* doth but suspend their Authority, which may be revived by a *Procedendo*.

Or by Implication; as by making other Commissioners of the same Kind, and within the same Limits, leaving out the antient Commissioners Names. 10 E. 4. 7. and 3 M. 1.

And observe, where any antient Commission of the Peace is determined by a New, yet no Process or Suit depending before the old Commissioners shall be discontinued thereby, neither shall any Act of theirs be made or become void thereby.

Or by the Accession of another Office, as Sheriff.

Or lastly, By the Accession of another Office; as when a Justice of Peace is appointed to be Sheriff of the same County, his Authority of a Justice of Peace is suspended during his Sheriffwick; but after another Sheriff is appointed and sworn, then this Authority revives and remains as it was before; without renewing of the Commission, and without taking the Oaths over again, except his Name is left out of the Commission, as sometimes had been used to be done.

And why.

The Reason why his Authority of a Justice of Peace is suspended during his Sheriffwick seems to be, for that the Sheriff is a Minister, and a Justice of Peace is a Judge, and the one is as necessary as the other. And besides the Office of a Judge being to command, and of a Minister to execute the Commandment; if one Man shall be both Judge and Minister, it would follow that the Sheriff ought to command himself, or that he should, as an Officer, serve

serve his own Precept made as Justice or Judge, which cannot be.

Also if a Justice of Peace is made a Coroner of the County, this by some Opinions is a Discharge of his Authority of a Justice of Peace; otherwise where he is made an Escheator, Under-Sheriff, Bailiff, or the like. *Lamb.* 72.

But if a Justice of Peace is made a Knight or Serjeant at Law, or hath any greater Name, or Office of Honour, or Dignity given him, this taketh not away his Authority of a Justice of Peace. *Br. Commiss.* 4 & 22. 1 *E.* 6. c. 7.

Note also; that altho' before the Statute of 1 *Ann.* c. 8. (herein before recited) by the Death of the King, or by his Resignation, the Authority of all Justices of the Peace, which are by Commission, and of all Judges, Commissioners of *Oyer and Terminer*, Commissioners of Gaol-Delivery, Sheriffs, Escheators, and other Officers that are by Commission, did cease, yet the Authority of Mayors and Chief Officers in Cities and Corporate Towns remain. So the Authority of the High Constable and Petty Constables; for that their Authority is by the Common Law, and to their Office the Conservation of the Peace remains, as a Thing incident and inseparable from the same.

Now by 1 A. c. 8. their Authority continues six Months,

and the Power of Mayors remains as before.

Coroners also remain Conservators of the Peace (within the County where they are Coroners) for they are made by the King's Writ, and their Office and Authority remains, until they are removed by the King's Writ; and the Conservation of the Peace remains as incident to their Office. They are elected by the Freeholders, and returned of Record into the High Court of Chancery; and therefore being judicially made, must be judicially discharged; they are as before-mentioned to preserve the Peace,

*Breach of the
Peace defined.*

*Which Peace
the Justices
are to keep,*

*and may com-
mand Assist-
ance.*

*Constable re-
fusing Aid may
be indicted.*

*Every Justice
to take the
Oaths.*

Peace, the Breach whereof seems to be an injurious Force or Violence moved against the Person of another, his Goods, Lands, or other Possessions, whether it be by threatening Words, or by furious Gesture, or Force of the Body, or any other Force used *in Terrorem* (for a Terror). The Office of the Justices of Peace is principally to be exercised to the Keeping of the Peace, and suppressing and bringing to Punishment Persons using such injurious and unlawful Force or Violence.

All Conservators of the Peace may command the Assistance of others to arrest all such, who in their Presence shall break the Peace, and for their Neglect herein they may be punished by Indictment. 3 *Inst.* 158.

And if a Constable, being called or required to see the Peace kept, refuseth, or shall be negligent therein, he may be indicted, and (if found guilty) fined for the same.

But it is no Part of the Office of the Justice of Peace to forbid lawful Suits; nor shall any Man be punished for suing any Writ in the King's Courts, but yet they may do well in being Mediators of Peace among their Neighbours.

Every Justice of Peace (before he shall take upon him to exercise the Office of a Justice of Peace) shall take the Oath of Office, the Oaths of Allegiance and Supremacy, and within three Months in some Parish-Church shall receive the Holy Sacrament, which being duly proved by Certificate, and the Oath of two credible Witnesses, in some Court of Record, shall take the Oath of Abjuration, and repeat and subscribe the Declaration against Transubstantiation; all which see in this Book, Title *Oaths.*

It is usual, that the Oath of Office, and of Allegiance and Supremacy are taken by a Special Commission, namely by a Writ of *De-dimus Potestatem* out of the High Court of Chancery, directed to some antient Justice of Peace, or other Person, to give the same Oaths, which is to be certified into the same Court at the Return of the Writ; the Justice of Peace, (or other Person) to whom a *De-dimus Potestatem* shall be directed for the Purpose aforesaid, if he shall return the Oaths to be taken, when they were not, he is finable in the Court of King's Bench.

So if the new Justice of Peace shall exercise *Before he acts,* this Office before he hath taken the said Oaths, he shall be disabled to sue, to be Guardian, *or be disabled* Executor, or Administrator, and be incapable *to sue, &c.* of any Legacy or Gift, or to be in any Office, and shall forfeit 500*l.* to him who will sue for the same.

Also if a Justice of the Peace shall not perform his Oath, (concerning his Office) it seemeth he is finable, &c. Yet see Co. 11. 98. *a.* That a Man shall not be charged in any Court judicial for the Breach of a General Oath, which he taketh when he is made an Officer or Minister, &c. But if he do a Thing contrary to his Oath, that aggravates his Offence.

Observe, That an Oath ought to have for *An Oath de-* its Companions, Truth, Judgment, and Right- *fined.* teousness, according to *Jer.* chap. ii. v. 4.

And if these Things shall be wanting, it will not be an Oath, but Perjury. No Man can deceive himself; for he who swears falsely, though by a Stone is perjured. With whatsoever Skill of Words, or mental Reservation any Person swears, GOD so accepts it
as

as he understands it, before whom it is sworn; and the Evil is the less to swear truly by a false God, than to swear falsely by a true GOD.

It is an Observation of my Lord Coke's, That much of the Happiness of this Nation depends on our Justices of the Peace well and faithful Discharge of their Duty, which Duty they may the better learn by perusing the Statute of 4 H. 7. c. 2.

The Authority and Power of these Commissioners or Justices of the Peace arising partly out of the Statutes, and partly out of their Commission, which Statutes being herein recited, you have here also the Form of that Commission, as follows:

The Commission of the Peace.

GORGE the Second *by the Grace of GOD of Great Britain, France and Ireland King, Defender of the Faith, &c.* To our right trusty and well beloved Charles Lord Talbot, Baron of Hensoll, Lord High Chancellor of Great Britain, &c. Greeting. Know ye, that we have assigned (appointed) you, and every one of you jointly and severally our Justices to keep our Peace in our County of Sussex, and to keep and cause to be kept all Ordinances and Statutes made for the Good of our Peace, and for Conservation of the same, and for the quiet Rule and Government of our People in all and every the Articles thereof, in our said County (as well within the Liberties, as without), according to the Force, Form and Effect of the same; and to chastise and punish all Persons offending against the Form of those Ordinances or Statutes, or any of them, in the County aforesaid, as according to the Form of those Ordinances and Statutes shall be fit to be done, and to cause to

come

come before you, or any of you, all those Persons who shall threaten any of our People in their Person, or in burning their Houses, to find sufficient Security for the Peace, or for their Good Behaviour towards us, and our People; and if they shall refuse to find such Security, then to cause them to be kept safely in our Prisons (until they shall have found such Security). We have also assigned you, and every Two or more of you (whereof we Will that A. B. or C. D. shall be one) our Justices to enquire by the Oath of honest and lawful Men of the County aforesaid (by whom the Truth of the Matter may be the better known) of all and all Manner of Felonies, Witchcrafts, Inchantments, Sorceries, Magick Art, Trespasses, Forestallings, Regratings, Ingrossings, and Extortions whatsoever; and of all and singular other Misdeeds and Offences (of which the Justices of our Peace can or ought lawfully to enquire) by whomsoever and howsoever done or committed, or that shall hereafter there happen howsoever to be done or attempted in the County aforesaid; and of all those, who in the County aforesaid have either gone or ridden, or that hereafter shall presume to go, or ride in Companies with armed Force, against our Peace, to the Disturbance of our People, and also of all those who in like Manner have lain in wait, or hereafter shall presume to lie in wait, to maim or kill our People; and also of Innholders, and of all and singular other Persons, who have offended or attempted, or that hereafter shall presume to offend or attempt in the Abuse of Weights or Measures, or in the Sale of Victuals, against the Form of the Ordinances and Statutes, or any of them, in that Behalf made for the common Good of our Kingdom of England, and our People thereof, in the County aforesaid; and also of all Sheriffs,
Bailiffs,

The INTRODUCTION.

Bailiffs, Stewards, Constables, Gaolers, and other Officers whatsoever, who in the Execution of their Offices about the Premisses, or any of them, have unlawfully demeaned themselves, or that shall hereafter presume unlawfully to demean themselves, or have been, or hereafter shall be careless, remiss, or negligent in the County aforesaid. And of all and singular Articles and Circumstances, and all other Things whatsoever, by whomsoever and howsoever done or perpetrated in the County aforesaid, or which hereafter shall happen howsoever to be done or attempted in any wise more fully concerning the Truth of the Premisses, or any of them: And to inspect all Indictments whatsoever so before you, or any of you taken, or to be taken, or made or taken before others, late Justices of the Peace in the County aforesaid, and not as yet determined; and to make and continue the Process thereupon against all and singular Persons so indicted, or which hereafter shall happen to be indicted before you, (until they be apprehended, render themselves, or be outlawed) and to hear and determine all and singular the Felonies, Witchcrafts, Incantments, Sorceries, Magick Arts, Trespasses, Forestallings, Regratings, Ingrossings, Extortions, Unlawful Assemblies, Indictments aforesaid, and all and singular other the Premisses, according to the Laws and Statutes of our Kingdom of England (as in the like Case hath been used and ought to be done): And to chastise and punish the said Persons offending, and every of them for their Offences, by Fines, Ransoms, Amerciaments, Forfeitures, or otherwise (as ought and hath been used to be done) according to the Law and Custom of our Kingdom of England, or the Form of the Ordinances or Statutes aforesaid. Provided always, That if a Case of Difficulty

upon the Determination of any of the Premisses shall happen to arise before you, or any Two, or more of you; then do not you, or any Two, or more of you proceed to give Judgment therein, except it be in the Presence of one of our Justices of the One or the other Bench, or of our Justices assigned to hold the Assizes in the County aforesaid.

And therefore we command you and every of you, that you diligently attend the Keeping of the Peace, Ordinances, Statutes, and all and singular other the Premisses, and at certain Days and Places, which you, or any such Two, or more of you (as is before-mentioned) shall in that Behalf appoint, you make Enquiries upon the Premisses, and bear and determine all and singular the Premisses, and perform and fulfil the same in Form aforesaid, doing therein that which to Justice appertaineth, according to the Law and Custom of our Kingdom of England; saving to us the Amerciements, and other Things to us thereof belonging.

Also by Virtue of these Presents, we command our Sheriff of the said County of Suffex, that, at certain Days and Places, which you, or any such Two or more of you as aforesaid, shall make known to him as aforesaid, he cause to come before you, or such Two or more of you as aforesaid, such and so many honest and lawful Men of his Bailiwick, (as well within Liberties as without) by whom the Truth of the Matter in the Premisses may be the better known and inquired of.

Lastly, We have assigned you the said A. B. Keeper of the Rolls of our Peace in our said County. And therefore you shall cause to be brought before you and your said Companions, at the said Days and Places, the Writs, Precepts, Processes and Indictments aforesaid, that the same may

may be inspected, and by a due Course determined as aforesaid. In Witness, &c.

Observations
thereon.

The first *Assignavimus* (we have assigned) of this Commission gives Power to any one Justice of the Peace, (more, or all) to keep, and cause to be kept, the Peace and all Ordinances and Statutes made for the Conservation of the Peace, and for the quiet Government of the People: As namely, the Statutes made for Hue and Cry after Felons; and the Statutes made against Murderers, Robbers, Felons, Night-walkers, and Affrayers, Armour worn *in Terrorem* (for a Terror), Riots, Forcible Entries, and all other Force and Violence; all which are directly against the Peace. The Particulars whereof you shall find more fully hereafter, and most of them under their proper Titles; and by this first Clause in the Commission, the Justices of Peace have as well all the antient Power touching the Peace, which the Conservators of the Peace had by the Common Law, as also that whole Authority which the Statutes have since added thereto.

The second *Assignavimus* in the Commission gives Authority to any two Justices of the Peace, or more, (one being of the *Quorum*) though the same Business is chiefly done at the Sessions, namely, To inquire (by a Jury) of all Offences mentioned within the Commission, to take and view all Indictments, or Presentments of the Jury; to grant out Process against the Offenders, thereby to cause them to come and answer; to hear and try all such Offences (upon any former or future Indictments taken before themselves, or before any other Justices of the Peace) after the Offenders

enders are come in, to determine thereof by giving Judgment, and inflicting Punishment upon the Offenders according to the Laws and Statutes, to wit, By Fine, Imprisonment, or otherwise according to Law: But not to award any Recompence to the Party wronged, otherwise than by Persuasion, save where Cost is allowed by any particular Statute.

And by the last Clause, the *Custos Rotulorum* (Keeper of the Rolls) shall have the Custody of Indictments, Presentments, Bills, Recognizances, and such like Records of Sessions; but not the Custody of Records of Riots, Precepts of Peace, or other special Records, or other Records not pertaining to the general Sessions.

Note; the *Custos Rotulorum* is always one of the *Quorum*. *Lamb.* 387.

The Power and Authority of the Justices of Peace, as well by the said Commission as by the Statutes, is in some Cases ministerial, and in other Cases judicial. Ministerial, when he is thereunto commanded by an higher Authority.

The Power of the Justice is ministerial and judicial.

As upon { A *Supplicavit* out of the Chancery or King's Bench, for the taking Surety for the Peace, or Good Behaviour. } *Ministerial,*
 { A Writ upon the Statute of Northampton upon Forcible Entry. }

In the Execution of which two Writs, the Justice of Peace is to proceed no farther, or otherwise, than he is authorized by such Writ; and is also to return the Writ, and to certify his Doings therein, into the Court whence the Writ came. So upon a *Certiorari* of any of the higher Courts at *Westminster*,

ster, directed to the Justices of Peace (or to any of them) to certify any Recognizance, Indictment, or other Record taken before him, or them, or any of them; or in his or their Hands.

Judicial.

In other Cases the Power of the Justice of Peace seems almost absolute, and by several Statutes several Things are referred to their Discretion, yet their Discretion ought to be limited and bounded with the Rules of Reason, Law, and Justice, and their Proceeding must be *secundum Legem & consuetudinem Angliæ* (according to the Law and Custom of England); and they ought, as before-mentioned, to keep their Sessions four Times in the Year; namely, the first Week after *Michaelmas*, after the *Epiphany*, after the Close of *Easter*, and after the Translation of *Saint Thomas a Becket*; and the Meaning of the Statute

They are to keep four Sessions in the Year.

The Times.

2 H. 5. c. 4.

of the Second of *Hen. 5. c. 4.* seems to be, That the several Weeks, wherein those Feasts shall happen to fall, must be first ended before the Sessions should begin; the Justices of the Peace in *Middlesex* are not obliged to keep more than two Sessions in the Year, but may do it oftner, if they think fit; but in the Counties Palatine of *Chester* and *Lancaster*, they are to keep only two Sessions, to wit, at *Michaelmas* and *Easter*. 42 H. 8. c. 43.

42 H. 8. c. 43.

How appointed.

And in regard that every Person concerned may know the Time and Place of Holding the Sessions, two or more of the Justices of Peace (one being of the *Quorum*) must direct a Precept under their Hands and Seals to the Sheriff of their particular County for that Purpose; which Precept or Writ of Summons should bear Test, (that is, be dated) fifteen Days before the Return, and ought forthwith

to be delivered to the Sheriff, to the End he may have sufficient Time to proclaim the Sessions, to summon and return the several Juries, and to warn all Officers and others that have Business there, to attend at the Sessions. It is usual upon the Grand Inquest (at the Sessions) to swear an odd Man, as Seventeen, Nineteen, or Twenty-one, to the End if they should dissent in Opinion somewhat equally, yet there should be always one to cast the Balance; and if Twelve of them agree, the Dissent of the Residue cannot hinder the Presentment.

Some Things are particularly enjoined in *Easter* and *Michaelmas* Sessions, and cannot be done in any other; as in *Easter* Sessions, affording Relief to maimed Soldiers. 43 *Eliz.* *Things appointed for particular Sessions.*

c. 3.

Taxing the Wages of Labourers.

Appointing Treasurers for the County Stock.

Rating Parishes for Charitable Use Money, &c.

Assessing the Prices of Carriage of Goods.

In *Michaelmas* Sessions, Justices who are to controul the Estreats of Sheriffs, must be chosen by the *Custos Rotulorum*, or by the eldest Justice of the *Quorum*.

Victuals, the Prices thereof are then to be rated, or at *Easter*.

The Court of Sessions of Justices of Peace is an Assembly of Two or more, whereof one is of the *Quorum*, at a Day and Place before appointed by them, in order to inquire of, hear, and determine Matters within their Jurisdiction; and the Sessions holden for the general Execution of the Authority of Ju-

Of what the Sessions consists.

How called.

stices of Peace, and which are usually holden in the four Quarters of the Year, are called General Sessions; and a Sessions holden on a Special Occasion for the Execution of some particular Branch of the Authority of Justices of Peace, is called a Special Sessions. *Bacon's New Abridgment of the Law* 608, 609.

And what it is.

These Sessions are Courts of Record; and observe, the whole Sessions is accounted but as one Day, and that if any Thing is done at a private Sessions, it should be returned to the Quarter-Sessions. *Style* 360.

The General Sessions relate to Bastardy, and the General Quarter-Sessions to Maintenance, &c. *Cases of Settlement* 185, 186. *The King* against *Shaw*, and *The King* against *Curnock*.

18 E. 3.

If an Indictment of Felony be found before *A. B.* Justice of Peace, without making Mention of any Commission that they have to hear and determine Felonies, this is no good Indictment, for by the Statute of the 18th of *Ed.* 3. they have Power by Commission to hear and determine Felonies, and not by Virtue of their Office only; and yet it is implied that all Justices of Peace by Force of their Commission have Authority to hear, and determine Felonies. 18 *E.* 3. *c.* 2. 34 *E.* 3. *c.* 1.

The Authority of the Justice of Peace is limited to be exercised only in the County or Counties where they are in Commission, and they are not to intermeddle with or punish any Trespas, or other like Offence committed in any other County against any Penal Statute, though such Offender should be brought before him; except the Statutes shall especially enable them thereto, as 1 & 7

Fac. 1.

Jac. 1. which enables the Justices of the County where the Offence shall be committed, or the Offender apprehended. 1 & 7 Jac. 1.

And yet in the Case of *Helier* against the Hundred of *Benhurst*, it was resolved, That where a Person robbed in one County, and made Oath before a Justice of the Peace of the same County being in *London*, that he might well take the Oath where he was, although out of the County, for he acted therein not by Virtue of his Office, but as a Person designed to a particular End and Purpose, and the Plaintiff had his Judgment: But they held, that if he acted or did any Thing by Virtue of his Office out of his County, it was void. 1 *Cro.* 153. *Helier against Benhurst.*

And now by a late Statute 9 *Geo.* 1. c. 7. 9 *G.* 1. c. 7. it is enacted, That if any such Justice shall happen to dwell in any City, or other Precinct, that is a County of it self, situate within the County at large, for which he shall be appointed a Justice, though not within the same County; such Justice may grant Warrants, take Examinations, and make Orders for any Matters, which any one Justice may act in, at his own Dwelling-house, though it be out of the County where he is authorized to act as a Justice, and in some City or other Precinct adjoining, that is a County of it self: And such Warrants, Orders, and other Acts of any such Justice; and the Acts of any Constable, Tithingman, Headborough, Overseer of the Poor, Surveyor of the Highways, or other Officer in Obedience to any such Warrant or Order, shall be good in Law, though it happen to be out of the Limits of the proper Precinct or Authority. Provided, That nothing herein shall give Power to the

Justices for the Counties at large, to hold their General Quarter-Sessions in Cities or Towns that are Counties of themselves; nor impower Justices, Sheriffs, Bailiffs, Constables, Headboroughs, Tithingmen, Borsholders, or any other Peace-Officers of the Counties at large, to act or intermeddle in any Matters arising within Cities or Towns which are Counties of themselves; but all such Actings shall be of the same Force, and none other, as if the said Act had never been made.

Power delegated must be exactly pursued.

Observe, That some Things are permitted to be executed by any One, Two, or more Justices, and other Things appropriated to one certain Justice of the Peace, or Two, or more Justices, and that in regard that such Justice or Justices is or are next the Place, or are of the *Quorum* in the Commission or the like; and where-ever the Law gives Authority unto One alone, the same may be done and performed by Two, or more Justices; but on the contrary where-ever the Law gives Authority unto Two, One alone cannot act; the Authority given by the Law should be expressly pursued, so that if an Authority is given to Four, or One of them, and Two should Act, this is not directly pursuing this Authority; so if an Authority is given to Three jointly and severally, if Two of them do this in the Absence of the Third, it is void, for that the Authority is not pursued. *Dyer 62.*

Stradling's Case.

And in *Stradling's Case*, this general Rule is laid down, namely, That when a Thing is appointed by any Statute to be done by or before one Person certain, that such Thing cannot be done by or before any other, but that

that it ought to be done as the Statute hath appointed. *Plow. 206.* And yet by the Statute of the 18th of *Eliz. cap. 3.* The Order to be taken for a Bastard-Child is appropriated to two Justices of Peace, (one being of the *Quorum*) in or next unto the Parish where such Child shall be born; if Two such Justices cannot agree, upon the reputed Father, (or in making such Order as the Statute requireth, or in other Execution of that Statute), It hath been questioned, what is to be done, and hath been lately moved to the Judges of Assize, who thought it fit, that such Difference between the two Justices of Peace should be referred to the Hearing of the whole Bench, and the Matter to be re-examined by them, and what Order should be therein set down by the Bench, the same to stand good.

18 Eliz. c. 3. relating to Bastardy.

Pertinent hereto is the following Case, which was argued before the Court of King's Bench, in the second Year of the late King George. *The King against the Parish of Hentland.* The Order made by two Justices, to whom the Matter was referred, is as follows: To the Church-wardens and Overseers, &c. and also to the Treasurer, &c.

The King against Hentland. A Bastard born in Gaul settled at the Mother's last Settlement.

Hereford, to **U**PON Complaint of the wit, Church-wardens and Overseers of the Poor of the said Parish of Hentland unto us, whose Names are hereunto subscribed, Two of his Majesty's Justices of the Peace for the said County (*Quorum unus*), That Margaret Harry, a Female Bastard-Child of about eight Tears old is lately become chargeable to the said Parish of Hentland, not having gained any legal Settlement; we upon Examination

mination thereof, and of Elizabeth Harry, single Woman, Mother to the said Margaret Harry, do believe the same to be true, and that the said Margaret Harry was born in this County-Gaol, and has not since that Time acquired any legal Settlement in any Parish, or other Place: We do therefore adjudge the said County-Gaol to be the Place of the last legal Settlement of the said Margaret Harry, and do require you the said Church-wardens and Overseers of the Poor of the said Parish of Hentland, or some or one of you, to remove and convey the said Margaret Harry from the said Parish of Hentland to the said common Gaol of this County, and her deliver to the said Treasurers, and to their Deputy, and to the said Gaoler or Keeper of the said County-Gaol, or some or one of them, who are hereby required her the said Margaret Harry to receive and provide for according to Law. Given, &c.

This Order not being approved, it was resolved to take the Opinion of the Judges of Assize, who being accordingly attended were of Opinion, That the Settlement of the Bastard-Child was in the County in General, and not in the Parish of *Hentland*, where the Mother's Settlement was; but the next Quarter-Sessions were of the contrary Opinion, and quashed the Justices Order for Want of Form; and upon this *Hentland*, removes the whole Proceedings by *Certiorari* into the Court of King's Bench; and the Matter being fully spoke to on both Sides, the whole Court resolved, That the Order of Removal of the two Justices was void, and confirmed the Order of Sessions, which had quashed the said Order of the two Justices

stices, and that for these Reasons: (1.) Because the Direction of the Order of Removal is not good, being directed to the Treasurers of the County, &c. for Justices of the Peace had no Power to remove poor Persons from one Parish or Place to another, before the Act of the Fourteenth of *Charles* the Second, chap. 12. and that Statute gives Power to direct the Order of Removal to the Church-wardens and Overseers of the Poor to receive and provide for such poor Person; and if they refuse to obey such Order, the Act directs the Punishment, and the 3d & 4th of *W. & M. cap. 11.* gives a further Penalty for Disobedience to such Orders, by the Forfeiture of 5 *l.* and directs how it shall be levied; which said Acts extend only to Church-wardens and Overseers of the Poor; so that if the Treasurers had disobey'd this Order, they had incurred no Penalty. (2dly,) The Justices of Peace have no Authority to raise Money upon the Subject for any such Use or Purpose by any Act of Parliament; and they are not obliged to take such Children to their own Houses; neither can they settle such Children in any Parish without doing Wrong to such Parish; the Act of the 43d of *Eliz. cap. 2.* which was relied on by the Counsel, does not extend to this Case; the Words are these, After it has established Treasurers for a County Stock to be raised quarterly on every County, for the Payment of so much Money annually to the King's Prison; then it says, that the Surplusage shall be bestowed for the Relief of Hospitals within the County, and for Relief of Losses by Fire, Water, the Sea, or other Casualties, and to such other charitable Uses
for

for Relief of the Poor, as the Justices shall think fit ; by this Act the Surplusage only is to be disposed of ; and it cannot be known whether any, or what that will be ; and not a Word of Bastard-Children born in the Gaols.

Thirdly, The removing any Person to Gaol, or the House of Correction, does not alter the Settlement of such Person, but such Person remains a settled Inhabitant in the Parish from which he or she was sent, to all Intents and Purposes ; and when such Person is discharged, he or she shall return back to the said Parish ; nay, if such Person be in Want, the said Parish from whence he or she was sent, shall contribute to such Person's Maintenance while they are so confined, which daily Experience does Witness, for they are *in Custodia Legis* (in the Custody of the Law) during such Confinement, and the Gaol is in no particular Parish of the County, but rather in every Parish within the County ; and therefore this Bastard-Child, though actually born in the Gaol, was born in the Parish of *Hentland*, where the Mother was settled, in the Eye of the Law, and so consequently must be chargeable on the Parish ; and therefore the Order of Sessions (which quashed the two Justices Order) was confirmed, and thereby the Child settled on the Parish of *Hentland*.

And where a Woman is big of a Bastard, and is removed to C. and there brought to bed, C. appeals, and the Order is quashed, the Bastard shall be sent back. *Cases of Settlement* 65.

So if delivered *in transitu*, the Child shall go with the Mother; so in Case of Fraud, or where the Child is born before the Order can be served. *Cases of Settlement* 66.

See the late Act of Parliament relating to 6 Geo. 2. the Examination of the Woman, Title *Wardship*, Page 106.

Serjeant *Salkeld*, in the second Volume of his Reports, Page 475, says, That not only the Authority given to Justices of Peace ought to be pursued, but that so it ought to appear in their Orders.

And their Orders being judicial Acts, are only voidable, for they continue Orders till avoided. 2 *Salk.* 674.

By *Holt* Chief Justice: The most regular *A good Way of* Way for Justices to proceed upon the Four- *removing a*teenth of *Charles* the Second, in removing a *poor Person.* poor Person, is to make a Record of the *14 Car. 2.* Complaint and Adjudication, and upon that to make a Warrant under their Hands and Seals to the Church-wardens to convey the Persons to the Parish to which they ought to be sent, and deliver in the Record *per proprias manus* (by their own proper Hands) into Court next Sessions, to be kept there amongst the Records to charge the Parish, and that Record may be well removed by a General *Certiorari* to the Justices of Peace. Mr. *Broderick* said, he had advised the Justices in *Surrey* to do so. 1 *Salk.* 406.

By the ninth of *Geo. 1. cap. 7. sect. 2.* No 9 *Geo. 1. c. 7.* Officer of any Parish shall (except upon sud- *sect. 2.* den and emergent Occasions) bring to the Account of the Parish any Monies he shall give to any poor Person of the same Parish, who is not registred in such Book or Books as the said Act requires) to be kept by the said

said Parish, as a Person intitled to receive Collection, on Pain of forfeiting five Pounds, to be levied by Distress and Sale, by Warrant of any Two, or more Justices of the Peace of the same County, who shall have examined into, and found him guilty of such Offence.

The Case of an Overseer relieving a Person not registered.

That *A. B.* an Overseer of the Poor, (upon sudden and emergent Occasions, as he thought) having relieved a poor travelling Woman with three small Children; another poor Woman that came through the Parish with a Pass; another Woman, an Inhabitant, who fell ill of the Small-Pox, he relieved with two Shillings and Six Pence; and one of the Justices, who granted the Warrant after mentioned, being in Company when this latter Affair was talked of, ordered an Apothecary present to attend her, which the Overseer paid, and also her Nurse; and bringing the same into his Account, the Petty Sessions refused to pass the same, and Two of the Justices (of whom One is before-mentioned) granted their Warrant to levy the Sum of Five Pounds (as forfeited by the aforesaid Act) by Distress and Sale of the Overseer's Goods, which was done accordingly; the Overseer thinking himself hardly dealt with had his Case stated, and took the Opinion of the late learned Mr. Serjeant *Darnall* deceased: The Case being as above recited, the *Quære* and Opinion were as follows:

Quære, Whether the Overseer under these Circumstances, in Point of Law, has incurred the Penalty of Five Pounds by the Statute aforesaid, or may safely prosecute his Action against

against the Distrainer; be pleased to give your Opinion particularly, and in the General how an Overseer should behave in such Case?

I Do not take it in this Case, That the Overseer hath incurred the Penalty of the Statute of the Ninth of his late Majesty; but it is a different Consideration, Whether an Action will lie against the Distrainer, and I think such Action is not maintainable; for this is a Matter whereof the Justices have Jurisdiction; and therefore the Distrainer is well justified by the Warrant. I think the Words of the Statute [No Officer shall bring to the Account of the Parish any such Money] must be understood to be a Charge upon the Parish, which it is not till his Accounts are passed, and I think the right Way would have been for the Justices to have disallowed his Account as to this Money; for I see no Reason to excuse the Overseer in giving this Money without the Authority of the Justice; and therefore 'tis his own private Charity, and he must lose it; as to the Overseer's paying the Apothecary, I see no Obligation upon him to do so: And if the Justice order'd the Apothecary to assist the Woman, the Justice must pay it himself, or give an Order to the Overseer to pay it, which Order will warrant the Charge in his Account.

*With Serjeant
Darnall's Opinion.*

J. Darnall.

15th of May 1735.

The

How the Justice of Peace shall defend himself against Actions.

The Gentlemen that Act in the Commission of the Peace (although they serve their Country at their own Expence) like other Bodies of Men (act they never so uprightly) will find litigious People sometimes to torment them, by bringing vexatious Suits against them; it may not be amiss therefore to shew how the Justice of Peace shall defend himself against such Suits, as may be brought for any Thing done by Virtue of his Office, namely, by pleading Not guilty, and giving the Special Matter in Evidence; and if the Law be with him, he shall have double Cost; such Actions must be laid in the proper County, where the Fact was done, or the Plaintiff cannot recover; so likewise against a Constable, &c. 7 Jac. 1. cap. 5. a temporary Act made perpetual by 21 Jac. 1. cap. 12.

And against Informations.

As Justices of the Peace are favoured by the Law in the Execution of their Office, so they are punished for any Misdemeanor; and besides bringing of an Action, there is another Method, by which some People attempt to prosecute the Justice of the Peace, namely by an Information in the Crown-Office, at the Relation of the Attorney General; but this cannot be done without Leave of the Court of King's Bench, which Leave will not be granted for every Slip or Error in Judgment; and indeed is seldom given, unless for some great Misbehaviour in his Office, or notorious Breach of his Duty, or for some malicious Proceeding, or wilful Neglect of Justice, nor even then without Hearing, or at least giving the Party accused Leave to be heard, for that the Facts may appear to be otherwise than they are stated

stated in the complaining Parties Affidavits; however, as these Prosecutions sometimes happen, and the Justice of Peace is sometimes served with a Rule of the Court aforesaid, to shew Cause why an Information should not be exhibited against him; it may be very proper also to shew how he shall defend himself against this Sort of Prosecution, namely, by employing some eminent Attorney at Law, who will obtain for him Copies of the Affidavits, which have been read in Court, and are affiled with the proper Officer in the Crown-Office; and these Affidavits must be encountered with other Affidavits of the Person accused, and such Witnesses as he can get, perhaps directly contradicting the Facts alledged against him, or setting the Matter in a better Light, or extenuating the Charge, as the Truth may be; and with these Affidavits (according to the Time prefixed in the Rule of Court) by some able Counsel he must shew Cause to the Court, why that Rule should not be made absolute for an Information to go against him; and upon hearing the Merits of the Case by the Affidavits set forth, and what shall be alledged by Counsel on both Sides, the Court will make such further Rule as shall be just, or by Discharging the last Rule, or making it absolute; if the latter should happen, the Defendant must appear by his Attorney in the Crown-Office, and when the Information is exhibited against him, he must plead thereto, and go to Trial as is usual in other Cases.

Abjuration.

in the following manner: The first part of the work is devoted to a general consideration of the subject, and the second part to a more particular examination of the various theories and systems which have been proposed. The third part is a collection of the most important facts and observations which have been made, and the fourth part is a summary of the results of the inquiry. The work is intended to be a general introduction to the study of the subject, and to be useful to all who are interested in it. It is not intended to be a treatise on the subject, nor is it intended to be a collection of facts and observations. It is intended to be a general introduction to the study of the subject, and to be useful to all who are interested in it.

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Abjuration.

THIS was a Punishment inflicted at Common Law ^{2 Inst. 201,} for Felony only, and then the guilty Person did usually fly to the *Sanctuary* of some Church, where he was to confess the Fact before the Coroner of the Place within forty Days, and then was to take an Oath to be banished perpetually, but not to a Country of Infidels.

Some Alterations were made in the Common Law by subsequent Statutes, as by 21 H. 8. the Coroner after the Confession, and before the Abjuration, was to cause the Offender to be marked with the Letter *A.* on the Right Thumb.

In the next Year the Parliament thought perpetual Banishment too great a Punishment for some Felonies; and therefore it was enacted, That such Offenders should not depart the Realm, but that they might go to some *Sanctuary* which they themselves should chuse, there to remain during Life. ^{22 H. 8. c. 14,}

By this and other Statutes, *Abjuration* was made so very intricate, that the Parliament, *Anno 1 Jac.* repealed all the Laws which were made concerning it, before 35 *Eliz.* and afterwards, *Anno 21* of his Reign, the Privilege of *Sanctuary* ^{21 Jac. 1. c. 28,} and all its Dependencies were quite abolished.

But *Abjuration* by Virtue of the Statute 35 *Eliz.* remained ^{H. P. C. 228,} still, because it had no Dependence upon the Privilege of *Sanctuary*; 'tis a Statute made wholly against Popish Recusants ^{35 Eliz. c. 2,} convicted, above sixteen Years, injoining them not to remove above five Miles from their Habitation; if they do, and not being Covert, nor having Land to the Value of 20 Marks ^{or Ann.} or Goods worth 40 *l.* they must abjure the Kingdom before two Justices of Peace or Coroner; which ^{2 Justices,} *Abjuration* must be certified by them to the next Assizes; and is Felony without Benefit of Clergy, if they do not depart within the Time limited by the Justices or Coroner, or departing and returning again without the King's License first obtained.

Abjuration.

Lam. 605.

It is the Opinion of *Lambard*, that such Abjuration must be made before two Justices at the Quarter-Sessions, and entered on the Rolls of the Court by the Clerk of the Peace.

But because at Common Law no Man could suffer perpetual Banishment but in Cases of Felony, therefore several Acts of Parliament have been made to inflict that Punishment upon other Offenders.

3 Ed. 3. c. 20.

As upon Trespassers in Parks and Ponds, if they cannot give Security by Recognizance to the King with two Sureties in 10 *l.* each, and the Party himself in 20 *l.* never to offend again in the like Nature.

9 H. 3. c. 10.

Upon Deer-Killers, who, after an Imprisonment for a Year and a Day, cannot give the like Security.

35 Eliz. c. 1.

And likewise upon Persons who absent themselves from Church without just Cause, and refusing to conform within three Months after Conviction, and to make such Submission as required by the Statute, being demanded to do the same by a Justice of Peace.

One Justice.

This Act was put in Execution against a Protestant Dissenter, Dr. *Chancey*, a Physician of *Bristol*, who abjured the Realm in the Reign of King *James II.* but he was restored by a Special Pardon.

1 W. & M.
sess. 1. c. 1.

But now those Penalties are taken away by the Statute 1 *W. & M.* upon taking the new Oaths, and subscribing the Declaration therein mentioned.

Two Justices, one being of the *Quorum*, may convene any Person before them, that is suspected to be dangerous or disaffected to the Government, and may tender the Oath of Abjuration, which if refused, upon the Justice's Certificate to the next Quarter-Sessions, if the Person does not take the Oath the next Term or next Sessions after such Certificate, he is become a Popish Recusant Convict. 6 *Ann. c. 14. s. 7.*

In all Cases where the Abjuration-Oath may be legally tender'd, or required of Quakers upon their solemn Affirmation, they are to take it in the Form directed by the Statute 1 *Geo. 1. c. 6. s. 3.*

Note; A *Feme Covert* shall not be obliged to abjure, but every other Offender who abjures, or being required refuses, forfeits all his Goods and Lands during Life. 35 *Eliz. c. 1. s. 12.*

Abjuration-Oath. See Oath.

Accessaries.

Accessaries.

IN High Treason, the Procurers before the Fact, or the Receiver of a Traitor afterwards, knowing him to be so, is a Principal: For in High Treason, and so in the lowest Offences (as Petty Larceny, Riots, Routs and Trespasses) there are no Accessaries, but all are Principals. *H. P. C. 215.*

In Petty Treason and other Felonies there may be both Principals and Accessaries: Also in other Felonies and in Forcible Entries, Riots and all Trespasses, the Aiders, Consenters or Abettors, if they are present at the Time when the Fact is committed, though 'tis personal and done by one, yet these are all Principals; but if not present, then they are Accessaries before: So likewise if they be in the same House, tho' not in the View of the Felony.

But in Murder, there may be a Principal, tho' not present when the Fact is done; as where one knows Drink to be poisoned, and persuadeth another to drink, who drinketh, and dieth in the Absence of him who persuaded it, yet it is Murder in him.

The Procurers and Abettors in stealing of a Woman, and those who receive her, knowing her to be stoln, are all principal Felons.

So upon the Statute of 5 *Eliz.* of Forgery of Writings, all are Principals.

A. and *B.* set upon *C.* and *D.* to rob them, *C.* flies one Way and *A.* pursues him, but robs him not, *D.* flies another Way, and *B.* pursues and robs him; and adjudg'd by the whole Court of *B. R.* that *A.* was a Principal in the Robbery of *D.* tho' not present, and he was hang'd for it. *Hill. 26 Eliz.*

But generally, the Presence or Absence of the Party makes the Difference between the principal Offender and the Accessary before the Fact; for if he is present, then he is a Principal, if he encourage, advise or abet; but if absent when the Thing is done, then he is Accessary before the Fact.

If a Felony, of another Nature than what was advised, doth proceed from the Abetting or Encouragement given by any ill Man, he is likewise an Accessary to it; as if he adviseth one Man to rob another, and instead thereof, he killeth him, making Resistance: In this Case, the Abettor is Accessary to the Murder, because his Advice was pursued to do an ill Act, which maketh him Accessary to all the Consequences thereof.

So 'tis if the Advice or Command was executed in another Manner, at another Time, or in any other Place than where commanded.

Who are Principals, and in what Cases, and where there are no Accessaries. *Dalt. 368.*

Dalt. 368.
H. P. C. 215.
3 Inst. 39.
4 Rep. 44.
Vaux's Case.

4 Co. 44.
3 H. 7. c. 2.

Moor 666.

Accessaries before the Fact. *Dalt. 369.*

Dalt. 369.

- H. P. C. 217. As if the Command is to rob on the Highway, and instead thereof the Person is robbed in his House; or to poison a Man, and he stabs him; or to rob him one Day, and he doth it another Time; in all these Cases, he is Accessary before the Fact.
- Gollf. 168. If a Man is in Confederacy with another to steal his own Goods, who stealeth them accordingly from his Servant, with an Intent to charge the Servant, this maketh him an Accessary.
- 3 Inst. 61, 62.
H. P. C. 215. And in all Felonies, which are made so by Statutes, and which were not so at Common Law, there are Accessaries both before and after the Fact; the Abettors, Aiders, Concealers and Receivers, are not named in the Statute, excepting only in Felony for carrying away a Woman against her Will, upon the Statute 3 H. 7. in which Case all are Principals.
- H. P. C. 217.
2 Inst. 183.
Who are not Accessaries before the Fact. When the Felony commanded is executed upon another Person; as if D. adviseth a Man to kill A. by Poison, who knowing thereof delivereth it to B. to eat, who eateth and dieth, this is Murder; but the first Adviser to poison is not Accessary to it.
- H. P. C. 217.
Lamb. 285.
H. P. C. ibid. So where there is a Variance in the Nature of the Offence; as if I command a Man to rob another on the Highway, and he commits Burglary.
- Lamb. 285. So where I command a Man to apprehend another, and he robs him.
- There can be no Accessaries before the Fact in Case of Man-slaughter, for it is an Offence which follows upon a sudden Affray. 4 Rep. 44. And if it was of Malice forethought it would be Murder.
- Trial of Accessaries.
H. P. C. 221. The Principal must always be named in the Indictment against an Accessary, and ought to be first attainted, otherwise the Accessary cannot be tried, for by the Acquittal of the one, the other is discharged.
- Dalt. 372. If an erroneous Judgment be given against the Principal, yet the Accessary must be tried, but if the Principal die before Attainder, or is acquitted by Verdict; or if after Conviction he hath had the Benefit of the Clergy, or is pardoned; or if 'tis found by Verdict that he killed another *se defendendo*, or *per infortunium*; in all these Cases, the Accessary is discharged.
- Dalt. 372.
- Cro. Car. 567. So if the Principal is burnt in the Hand, the Accessary is thereby acquitted. See the Rules after.
- By the Common Law there could be no Accessary in one County to a Felony done in another, because those of a strange County could not upon the Trial have any Cognizance of the principal Offence; but this is now remedied by the Statute 2 & 3 Ed. 6. c. 24. (*viz*) That if a Felony is done in one County, and there are Accessaries in another, they may be indicted as Accessaries.

The Law seemed defective in this Matter, (*viz.*) That no Accessary could be convicted or suffer Punishment where the Principal was not attainted, or had his Clergy; and by this Means the Contrivers of Felonies, and the Receivers of stolen Goods, often were unpunished; therefore a late Act was made, 1 Annæ, c. 9. that if a Man is convicted of Felony, or stands mute, or challenges above twenty of the Jury, it shall be lawful to proceed against the Accessary, notwithstanding the Principal had his Clergy, was pardoned, or otherwise delivered *before Attainder*; and such Accessary shall suffer the same Punishment, if convicted, stands mute, or challengeth above twenty, as he should have suffered, if the Principal had been attainted.

By this Act, he that *buys or receives* stolen Goods, knowing them to be stolen, shall be prosecuted for a Misdemeanor, and fined and imprisoned, though the Principal is not convicted; and if he happen to be convicted afterwards, that Punishment shall exempt the *Receiver, &c.* from being again punished as an Accessary.

Persons convicted of Offences, for which they are excluded the Benefit of the Clergy; and also Receivers and Buyers of stolen Goods (knowing them to be stolen) may be transported for fourteen Years. 4 G. 1. c. 11.

And by 6 Geo. 1. c. 23. this Act is again enforced, and gives a Reward of 40 *l.* to any who shall prosecute and convict a Felon, without Benefit of Clergy, for taking Money or other Reward directly or indirectly to help Persons to their stolen Goods (such Persons not having apprehended the Felon who stole the same, and brought him to Trial and given Evidence against him).

It was formerly held, that he was an Accessary after the Fact, who received or aided a Felon, tho' he did not know any Felony was done; but then the Receiver must dwell in the same County where the Felon was outlawed; and the Reason was, because upon the Outlawry he is a Felon upon Record, and the Proceedings being in the County-Court, all the Inhabitants of the County ought to take Notice of it: But this was thought too severe, and therefore now a more particular Knowledge of the Fact is required.

Those who willingly receive Felons, or relieve, assist, comfort or aid them, knowing they have committed Felony, are Accessaries after the Fact. Who is Accessary after the Fact.

The Fact, to which the Party is an Accessary, must be Felony at the very Time in which he becomes an Accessary; and therefore the Receiver of one who gave a mortal Wound to another before the Death of the Party struck, is not an Accessary to the Murder, because it would not be Felony in the Person received at the Time of the Stroke given, for the Man was then living.

In Goods stoln
and bought at-
terwards.

He, who buyeth stoln Goods for less Value than they are really worth, seems* to consent to the Stealing; for by an Under-value it appeareth, that the Seller did not come by such Goods honestly.

But *Dalton* makes a Difference in this Case, between a Buyer who is a Stranger, and one who is an Acquaintance of the Thief; for if a Stranger buy stoln Goods for near the Value, he is not punishable; but if a Companion of the Felon buy the Goods which he stole for less Value, this, he says, is by Covin, and makes him an Accessary after the Fact. Formerly to receive Goods stoln, knowing them to be stoln, did not make an Accessary, unless he did likewise receive the Thief.

3 & 4 W. & M.

* But now by the Statute 3 & 4 W. & M. c. 9. buying or receiving stoln Goods, knowing them to be stoln, makes an Accessary to the Felony after the Fact. And by 5 *Annæ*, c. 31. if convicted thereof he shall suffer Death as a Felon.

Retaking stoln
Goods by the
Owner.

If the Owner hath complained to a Justice of Peace, or to a Constable, or if the Felon be taken upon Hue and Cry, or otherwise, and then the Owner takes his Goods, or compounds with the Felon, or consents to his Escape; this makes him an Accessary after the Fact, because he did once act against the Offender *criminaliter* (criminally).

But if in Pursuit he taketh his Goods, and suffereth the Felon to escape before any Complaint made to the Justice, or without being charged, &c. This is a Misdemeanor, for which he may be fined; but it doth not make him an Accessary, because *in initio* (in the Beginning) he has Liberty *agere civiliter vel criminaliter* (to act civilly or criminally).

A Servant is so by relieving his Master, being a Felon, or by assisting him to escape; for he is bound to accuse him, or to depart his Service; and so is the Master by relieving his Servant.

So a Husband receiving a Wife, knowing her to have done a Felony, *sed non e converso* (but not on the contrary). For a Feme Covert cannot be accessary to her own Husband, but she may be to another. *Fitz. Coron.* 383. *Staundf.* 26 & 43. Q.

Who are not
Accessaries af-
ter the Fact.

Those who receive a Man bailed for Felony, or relieve a Felon in Prison, are not Accessaries. Nor to send Letters or Messengers in his Favour to teach him to read, or to advise him that he endeavour to persuade the Witnesses not to appear against him at his Trial; but any Endeavour to persuade or deter Witnesses from appearing is a Misdemeanor.

If one be the Cause of a Felon's Escape, tho' it be his own Brother or Father, he is Accessary; but the not revealing a Felony which I know is intended to be done, or suffering a Felon to escape, but giving him no Assistance, does not make me accessary to the Felony.

Rules

Rules concerning Principal and Accessary.

E*X vi Termini* (from the Force of the Word) the Principal is to be tried before the Accessary, and therefore one *Cholmley*, Recorder of *Lincoln*, was turned out of his Office for trying the Accessary first. 1 Vent. 146.

If the Principal is acquitted or convicted of Manslaughter, or in his own Defence, or is admitted to Clergy before Attainder, or is pardon'd, or dieth, the Accessary is acquitted: But this must be before Attainder; for if afterwards, the Accessary shall be arraigned. Raym. 47.

If the Principal doth not appear, or appearing stands mute, the Accessary cannot be tried; if he is not attained, the Accessary shall not be outlawed: If a Man is indicted as Accessary to two Principals, one of which happens to be convicted, and the other doth not appear; yet the Accessary shall be tried, and may be condemned if found Accessary to the Party convicted, and may again be arraigned as Accessary to the other when he appeareth. V. 1 Ann. c. 9.

If both Principal and Accessary plead to the same Felony, they may be tried by the same Jury; but Judgment must first be had against the Principal, and the Jury must be charged to acquit the Accessary, if they find the Principal Not guilty.

The Accessary shall not take Advantage of any Error in the Attainder of the Principal. 9 Rep. 119. B. Dalt. 372.

Where a new Felony is made by Statute, which was not so at Common Law, there may be Accessaries, tho' not named in the Statute.

— In an Indictment against an Accessary, you may set forth the Manner of the Felony, and that the Defendant knowing him to have done such a Felony, feloniously received, &c.

If a Criminal is indicted as Principal, and acquitted, he cannot afterwards be indicted as Accessary *before that Fact*, because he, who advises the Thing to be done, is in a Manner guilty of the Fact itself; and being acquitted of that, he is discharged of all Guilt before the Principal Fact committed. See 2 Hawk. c. 29. & c. 36. sect. 6.

But notwithstanding such an Acquittal, he may be indicted as Accessary *after the Fact*, because such an Accessary cannot be guilty of committing the Fact itself, for that was done before he knew any Thing of it. *Kelynge* 26.

An Indictment against an Accessary before the Fact.

Middlesex, (to wit,) **T**HE Jurors for our Sovereign Lord the King, upon their Oath present, That whereas R. C. late of London, Yeoman, and J. J. late of London aforesaid, Yeoman, not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, on the Eleventh Day of May in the Tenth Year of the Reign of our Sovereign Lord James now King of England, &c. at London, to wit, in the Parish of St. Dunstan in the West in the Ward of Farringdon without, with Force and Arms, &c. did feloniously and of their Malice forethought make an Assault and Affray in and upon one John Turner, then and there being in the Peace of God, and of our said Sovereign Lord the King, and that the said R. C. did then and there feloniously, voluntarily and of his Malice forethought shoot and discharge in and upon the said John Turner a certain Pistol of the Value of five Shillings, then and there charged with Gun-powder and a leaden Bullet, which said Pistol the said R. C. then and there had and held in his Right Hand, and that the said R. C. then and there feloniously struck the said John Turner in and upon the Left Breast of the said J. T. with the said leaden Bullet then and there issuing, and shot off out of the said Pistol, giving to the said J. T. then and there with the leaden Bullet aforesaid then and there issuing, and shot off out of the said Pistol, one mortal Wound of the Breadth of Half an Inch, and the Depth of five Inches, in and upon the Left Part of the Breast of him the said J. T. of which said mortal Wound the said J. T. at London aforesaid, in the Parish and Ward aforesaid * instantly died, and the said J. J. feloniously, and of his Malice forethought was then and there present aiding, assisting, abetting, encouraging and maintaining the said R. C. feloniously to do and commit the Felony and Murder aforesaid in Manner aforesaid; and so the said R. C. and J. J. at London aforesaid, in the Parish and Ward aforesaid, in Manner and Form aforesaid feloniously, voluntarily and of their Malice forethought did kill and murder the said J. T. against the Peace of our said Sovereign Lord the King, his Crown and Dignity: And that one Robert Creighton, late of the Parish, &c. Esq; not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, before the said Felony and Murder by the said R. C. and J. J. in Manner and Form aforesaid done and committed, that is to say, on the Tenth Day of May in the Tenth Year aforesaid, at the Parish aforesaid in the said County, maliciously, feloniously, voluntarily

* If the Death is not immediately, then say, Languished and languishing lived to the first Day of June in the Year, &c. on which said first Day of June in the Year aforesaid the said J. T. died of that mortal Wound.

luntarily and of his Malice forethought excited, moved, abetted, consulted and procured the said Robert Carliel to do and commit the said Felony and Murder in Manner and Form aforesaid, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Upon this Indictment, *Robert Creighton, Lord Sanchar*, was convicted and executed in the *Palace-Yard*, in the tenth Year of King *James the First*. See 9 Co. 119.

Upon all these Indictments of Accessaries before and after the Fact, the Course is to set forth the Fact in the Indictment, and conclude it, *against the Peace of our said Sovereign Lord the King, his Crown and Dignity*; and then if the Indictment be against an Accessary before the Fact, you go on, and say, *And that one J. O. late of H. in the said County, Yeoman, on the 23d Day of August in the tenth Year aforesaid, and on divers Days, and at divers Times before the said Felony and Murder done and committed in the Manner aforesaid at H. aforesaid in the said County, maliciously and feloniously consulted, commanded, procured, excited and abetted the said R. C. voluntarily to do and commit the said Felony and Murder against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.*

Accessary before the Fact.

If after the Fact, then the Form is thus, (to wit,)

That J. O. late of H. in the said County, Yeoman, after the said Murder and Felony in Manner aforesaid done, knowing that the said (Offender) had done and committed the said Felony and Murder, in Form aforesaid, on the 24th Day of August in the tenth Year aforesaid at H. aforesaid in the said County feloniously received, aided and comforted him the said (Offender) against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

After the Fact.

Addition.

BY the Statute of 1 H. 5. where Process of Outlawry lieth, the Condition and Dwelling of the Defendant must be inserted, or else the Outlawry is void. 1 H. 5. c. 5.

But if there is no proper Addition of either Mystery or Place in an Indictment for *Encroaching on a Highway*, 'tis good, because a *Distress*, and not Process of Outlawry, lieth in that Case. Cro. Eliz. 148. Lord Dacre's Case.

But Surplusage of Addition doth no Hurt; the Omission is fineable by the Chancellor, at Discretion, upon those who make Original Writs.

This Statute doth not extend to Informations.

Addi-

Addition.

Additions are either $\left\{ \begin{array}{l} \text{of Degrees or Estate,} \\ \text{of Mystery or Trade,} \\ \text{of the Place of Abode.} \end{array} \right.$

Degrees or Estate.

Dignities were Parcel of the Name at Common Law, and none could confer a Dignity but the King; but Degrees are Additions to the Name and within the said Statute, and seem intended of University Degrees, &c. and therefore not necessary to be in the Original Writ, &c. provided some other Addition be therein, so as to ascertain what Person is intended: Therefore Doctors or *Bachelors*, &c. of Divinity may be named *Clerks*, and so Esquires or Yeomen may be named Gentlemen; and the Word *Estate* intends only the State or Condition of the Party, as Master, Servant, Wife, Maid, Widow, &c.

Before the Making of this Statute, the Name of Dignity even at Common Law was to be added, because it was Parcel of the Name.

Dethick's Case, *Garret*, King at Arms was indicted for striking in the Church-yard: And because he was not so named in the Indictment, it was quashed.

2 Inst. 668.

So an Appeal of Murder was brought against *William Oldcastle* of B. &c. Yeoman, and *M. O.* his Wife, *Spinster*; the Woman pleaded, that at the Time of the Writ, &c. she was a *Gentlewoman*, &c. The Plaintiff replied, That was not a good Addition.

Godb. 59.
Cro. Eliz. 750.
Lafington's Case.

35 H. 6. 55.
25 E. 3. 41.
27 H. 6. 3. 5.
5 E. 4. 10. 6.
Dyer 203.
1 Hawk. 9.
Bro. Nofin de Dignity 25.
Sid. 101.

An Indictment against *D. Viduam* (Widow), is not a good Addition, and yet if 'tis against *A.* the Wife (or Widow) of *B.* 'tis good.

And by many Books it appears, that neither Doctor of Divinity, Master of Arts, Archdeacon, Dean, Provost, Prebend, Parson, Vicar, &c. are legal Names of Dignity; and that any of these, if in Holy Orders, may be indicted, &c. by the Addition of *Clericus* (Clerk).

Of Mystery or Trade.

As to this Matter, 'tis sufficient if the Addition is in *Engliffe*.

Broker,	Husbandman,
Grocer,	Labourer, &c.
Hostler,	

Of the Place of Abode.

And this Addition must be as the Defendant then is.

7 H. 4. 27.
2 Inst. 669.
2 And. 125.
1 Vent. 170, &c.
Waldron and Ruscarrit.
22 H. 6. 41, 47.

1. If the Town and Parish are both of one Name, then the Addition of either is good. So likewise if there be two Hamlets in the same Town.
2. If two Towns are in the same Parish, then the Defendant must be named of the Town only.

3. If

3. If he is of a Place known within the Town, then he must be named of the Town.
4. The Addition of Place may be such whereof the Defendant was once; but the County, Town or Hamlet, whereof he is, or was, must be set forth.

This Addition of Place must be in the first Part of the Indictment; for if 'tis after the *Alias dictus* (otherwise called), 'tis not good. A Man was outlawed upon a Presentment before a Coroner, for not giving an Account what Goods he had in his Hands of a *felo de se*; and upon a Writ of Error to reverse it, the Objection was, That there was no Addition of Place or Mystery in the Presentment. But it was adjudged, That though the Statute relates only to Outlawry on Original Writs, in Personal Actions, and upon Appeals and Indictments, yet this Presentment shall be accounted in Law as an Indictment.

2 Leon. 183.
Cro. Eliz. 198;
219, 583.
2 Leon. 200.
2 Inst. 669.
1 Sid. 420.
1 Vent. 13.

Affray.

AN Affray is a publick Offence to the Terror of the People. It is a Fighting between two or more, and differs from an Assault; for the one is a common Wrong, the other is an Injury done to a particular Person.

There must be a Stroke given or offered, or a Weapon drawn, or otherwise 'tis not an Affray. *H. P. C. 135.*

But yet a Challenge to fight by Word or Messlage, has been held an Affray; and *Anno 16 Car. 2.* one *Collins* was indicted for carrying a Challenge, knowing the Contents, and was found guilty, and fin'd 100 *l.* and committed for a Month without Bail, &c. *Sid. 186.* *King* against *Darcy and Collins.* *Quere,* Whether it can be called an Affray, though 'tis a very high Offence, for which Indictment or Information lies, and in the Report the Word is not mentioned; but 'tis said to be a high Misdemeanor.

What it is.
See 1 Hawk.
c. 63. and 2
Hawk. c. 13.
sect. 8. and
c. 14. sect. 6.

'Tis to be considered upon this Head {
What may be done, {
1. By the Constable,
2. By a Just. of Peace,
3. By a private Person.

1. By the Constable.

He may command the Affrayers to depart, and upon Refusal may commit them: If they resist, he may call others to his Assistance, and may justify the Wounding in such Case.

If it is a great and dangerous Affray, he may commit them till they find Sureties for the Peace.

If

Affray.

If any Person is wounded, he may commit the Offender, or if he will, he may carry him before a Justice, who may commit him, if he will not give Security to appear at the next Sessions.

He may take them out of a Franchise in the same County: He may pursue them into another County; but then when taken, he must carry them before a Justice of the Peace, for he cannot commit out of the County.

If he is assaulted doing his Duty, or if the Affray be in his Presence, he may put them into the Stocks till he can get Assistance to convey them to Gaol; or he may secure them according to the Quality of the Offenders, till he can bring them before a Justice, or to Prison, but not in his own House. *Dalt. 29. Lamb. 133. H. P. C. 135.*

If he is hurt in the Affray, he may have an Action of Trespas.

If there is Threatning to kill, or beat or hurt, though this is no Affray, yet he may apprehend the Persons, and carry them before a Justice: But where an Affray is over, he cannot apprehend any one without a Warrant from a Justice, unless some Person is dangerously wounded.

If he neglect his Duty in not endeavouring to suppress an Affray, &c. 'tis presentable at Sessions, and he ought to be fined. *H. P. C. 135.*

2. By the Justice.

If the Affray is in his Presence, he may commit till they find Sureties.

If any Person is dangerously hurt, he may within a Year and a Day after the Hurting commit; and 'tis not Discretion to bail the Offender, though he may do it by Law.

He may *ex Officio* (by Virtue of his Office) require those who strike or threaten in his Presence, to find Sureties for their good Behaviour.

3. By a private Person.

Any Man may stay the Affrayers who are about to assemble to break the Peace, till the Heat is over, and deliver them to the Constable.

Likewise any Man may apprehend an Offender who hath dangerously wounded another; and carry him before a Justice, or to a Gaol. *H. P. C. 135. Dalt. 29, 30.*

If two be fighting, and others looking on do not endeavour to part them, and the one be killed, the Lookers on may be indicted and fined. *Noy's Rep. 50.*

An Indictment for an Affray generally.

Suffex, (to wit,) **T**HE Jurors for our Sovereign Lord the King upon their Oath present, That T. P. of H. in the County of Suffex, Taylor, and J. S. of the same Place, Blacksmith, and J. O. late of, &c. with Force and Arms, to wit, with Swords, Staves, and other warlike Instruments on the 23d Day of August in the ninth Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. at H. aforesaid in the said County, being array'd and unlawfully assembled together in a Warlike Manner, did by turns make an Assault and Affray to the Terror and Disturbance of divers Subjects of our said Lord the King then and there being, and to the evil and pernicious Example of the Subjects of our said Lord the King, and against the Peace of our said Lord the King, his Crown and Dignity.

An Indictment for an Affray and Beating another.

Suffex, (to wit,) **T**HE Jurors for our Sovereign Lord the King upon their Oath present, That J. O. late of, &c. and J. S. late of, &c. with Force and Arms, &c. on the 23d Day of August in the ninth Year, &c. at H. in the said County, of their Malice forebought made an Assault and Affray in and upon one R. D. of H. aforesaid in the said County, Yeoman, then and there being in the Peace of God, and of our said Sovereign Lord the King, and struck upon the Head the said R. D. with certain Swords, which the said J. O. and J. S. then and there severally held in their Right Hands, and then and there gave to the said R. D. divers Wounds, which put him in great Danger of his Life, that his Life was despaired of, to the bad Example of other Subjects of our said Sovereign Lord the King, and against the Peace of our said Lord the King, his Crown and Dignity.

A Warrant to apprehend Affrayers.

To the Constable, &c.

WHEREAS I am credibly informed by A. B. of, &c. that C. D. of, &c. and E. F. of, &c. did at R. in the County of M. in a riotous and tumultuous Manner on the — Day of, &c. make an Affray, wherein the Person of the said

Affray. Alamodes, &c. Ale-houses.

said A. B. was beaten and abused by them the said C. D. E. F. &c. without any Provocation given by him the said A. And whereas the Constable of the said Parish of, &c. was not present, nor to be met with during the Time of the said Affray, so as the said Offenders were not apprehended: These are therefore to command you to apprehend the said E. F. &c. and bring them before me, or some other Justice of Peace for this County, to answer the Premises, and to find Sureties for their good Behaviour, &c. Given under my Hand and Seal, &c.

Alamodes and Lustrings.

SEE the Statutes 8 & 9, and 9 & 10 W. 3. c. 43. That any Person, by Warrant from one Justice, may go with Constables into any Shop, or, &c. and search for Alamodes, or, &c. and seise the same, if fraudulently imported, sealed or marked, &c.

Ale-houses. See Drunkenness.

Their Use, &c.

THE true Use of Ale-houses and Inns was for the Relief and Lodging of Travellers, and to supply the Wants of those who are not able to provide great Quantities of Drink and Provision; and if any Alehouse-keeper, or Inn-keeper refuse to lodge a Traveller, the Justice of Peace may compel him to it, or the Constable may present it as an Offence next Sessions, in order to suppress it; or the Party may have an Action on the Case; but they cannot be compelled to sell Victuals, unless the Traveller tender Money, if required.

At Common Law, it was lawful for any Person to build an Inn for the Reception of Travellers, and without a License from the Justices; but if the Inn-keeper sold Ale by Retail to any Person besides Travellers, and without a License, he was punishable. *Hutt. 99.*

Before the Statute 5 E. 6. it was lawful for any one to keep an Ale-house without a License; for it was a Means of Livelihood not prohibited by any Law; but if kept in a disorderly Manner, it was indictable as a Nuisance. *M. 13 W.*

As Ale-houses increased, and were used to disorderly Purposes, so several Laws were made to suppress both the Numbers and Disorders.

These

These Laws generally concern, } 1. Licensing,
2. Disorders,
3. Officers.

The first was made *Ann. 11 Hen. 7.* by which Power is given to two Justices to reject the Selling Ale. 11 H. 7. c. 2.
5 & 6 Ed. 6.

There was no further Provision made in this Matter till about fifty-six Years afterwards, and then *Anno 5 & 6 Ed. 6.* a Law was made, That no Man should keep an Ale-house without being licensed, either in Sessions, or by two Justices one being of the *Quorum*. c. 25.
Inns are with-
in this Statute
as to licensing.

Order of Sessions to hinder the Defendant from selling Ale; following Exceptions taken to the Order. First, It did not appear by the Order to be a common Ale-house. *Resp.* Every Ale-house is a common Ale-house. Secondly, It does not appear that the Defendant was summoned. To this it was said that Summons had been necessary if the Statute had not given the Session or two Justices an absolute Power to put down Ale-houses at their Discretion; so that where they have an unlimited Power, 'tis not necessary to set forth any Summons in their Order; neither is a Summons ever set out in Orders, but in Convictions for Deer-stealing and the like. Where great Fines are imposed, there 'tis usual to set forth that the Party was summoned; but 'tis not so in Orders of Bastardy. Third Objection, That the County is only in the Margin, and not in the Body of the Order; so it does not appear in what County the Ale-house is. Answered, It was not necessary to be in the Body of the Order, because it was no Crime to keep an Ale-house. 'Tis true, in all criminal Cases, either upon Indictments, Convictions or Orders, if the County is only in the Margin, and not in the Body of the Order, the Proceedings ought to be quashed. So it has been resolved several Times, between *King and The Parish of Sherringham, King and March, &c.* because the County in the Margin shews only that the Order was made in that County, but not that the Ale-house was then, or that the Person who kept it lived in the County; so that the Justices of the County have no Jurisdiction. The Secondary being asked by the Court, said that the Court was divided in *King and Glegg*, that the Name of the County in the Margin had been held good in several Orders of Removal; but the last Day of Term the Order was quashed for that Fault, the Name of the County not being in the Body of the Order, but only in the Margin; and the Court said that several Orders of Removal had been quashed for the same Fault. *King and Austin, Mich. 11 Geo. 1. B. R.*

Two Justices made an Order to suppress an Ale-house, and being informed that the Defendant sold Ale afterwards, they made another Order, reciting the first, by which he was ordered not to sell any more Ale, and that it now duly appear'd to them that he had sold Ale since that Time; therefore for not obeying the former Order, they committed him for three Days without Bail or Mainprize, and until he entered into Recognisance not to sell any more Ale. And now it was moved to quash the Order. Excepted to it, That it does not appear in the Order, that the Defendant was duly summoned, so he had no Opportunity to defend himself; for if he had been summoned, he might have shewn some Cause against the making this Order; as a License from other Justices, &c. Besides, 'tis not an Order to carry the former Order into Execution, but an Order dependent on a Fact subsequent to the first Order; and natural Justice requires that the Defendant should be summoned and heard before he is condemned; as in *Queen and Dyer*, Conviction on 7 *Jac. 1. c. 1.* for imbeziling Yarn, setting forth, that whereas Complaint had been made to *T. S.* and *E. J.* &c. and whereas the Defendant was duly summoned to appear before them, and by Virtue thereof did appear on *Tuesday* the 17 Day of *April*, whereas the 17th Day of *April* was on a *Friday*; and for that Reason the Conviction was quashed; for it was held that a Summons was necessary, and the Time to appear upon such Summons was impossible, because there was no such Day; therefore the same as if no Summons at all. So in *Queen and Green*, set forth that the Defendant was summoned, but did not say how; and since here can be no Appeal, it would be hard to tie the Defendant down. On the other Side it was said, that there is a Difference between Judicial and Ministerial Acts, for in the one all Things shall be intended regular, till the contrary appears. Now the Suppressing Ale-houses is a Judicial Act; for by the Statute the Justices of Peace have a Judicial Power to suppress them *ad Libitum*; and therefore the Court will intend that the Defendant was duly summoned; but in Ministerial Acts 'tis otherwise; for in such Case it must appear to be right, and nothing shall be so by Intendment; as in the Return to a *Mandamus*, all must appear to be regular; because the Returns are made by ministerial Officers. *Curia*: If the Defendant was never summoned, 'tis a Misbehaviour of the Justices who made the Order, for which an Information will lie against them; so that if the Fact is true, the Defendant has a proper Remedy. Now the Question in this Case is not, whether a Summons is necessary, but whether 'tis necessary to set it out in the Order; and it was held

that it was not; so the Order was confirmed by the whole Court. *King and Venables, Trin. 11 Geo. 1. B. R.*

The Punishment was Commitment for three Days without Bail, not to be enlarged till the Offender entered into a Recognizance with two Sureties not to keep an Ale-house.

Which Recognizance being certified to the next Sessions, was to be a sufficient Conviction to fine him 20 s.

This Statute doth not extend to Inns, for these are for lodging Travellers; but if an Inn degenerate into an Ale-house, and the Master or Inn-keeper suffer Men to sit tippling there in a disorderly Manner, it shall be taken to be an Ale-house. *M. 13 W.*

By this Statute Power was given to the Sessions, or to two Justices, to put down Ale-houses at Discretion, and to take Recognizances of Alehouse-keepers not to use unlawful Games, or keep Disorders in their Houses.

That the Sessions might suppress an Alehouse without Informa-
2 Raym. 1303.

tion or Conviction, or without shewing any Cause.

The Conviction upon this Statute ought to be by Way of Presentment or Indictment at the Sessions, and the two Justices ought not to commit till Conviction.

Yet there are some Books which tell us, That an Indictment will not lie for keeping an Ale-house without a License, because this Statute directs in what Manner the Offender shall be punished, *viz.* by committing him.

Palm. 388.
2 Rol. Rep. 328.

But because many Alehouse-keepers in those Days were not able to pay that Forfeiture, and it was seldom levied by reason of Poverty, which made People unwilling to present the Offenders; therefore a farther Punishment was added by the Statute 3 Car. which not only inflicts the Forfeiture of 20 s. to the Use of the Poor, to be levied by the Constable or Church-warden by Warrant of a Justice, before whom the Offence was proved, and which Distress may be sold three Days afterwards; but it provides, That if no Distress can be taken, the Justice shall deliver the Offender to the Constable to be whipped.

3 Car. c. 3.

This Statute appoints the Conviction to be by Confession, View of the Justice, or Oath of two Witnesses.

For the second Offence committed to the House of Correction for a Month.

For the Third, not to be enlarged but by Order of Sessions.

That the Justices must not make a Warrant for less than 20 s.

That *Feme Covert* keeping an Ale-house without License, her Husband may be punished.

The Defendant was convicted upon the Statute 3 Car. for selling Ale *sine aliqua licentia & contra formam statuti* (without any License, and contrary to the Form of the Statute);

and upon a Motion to quash this Conviction it was objected, that the Selling without License is punishable by former Statutes, particularly by the Statute 5 & 6 Ed. 6. by which 'tis enacted, that none shall keep Ale-houses without License granted either in Sessions, or by two Justices; and it doth not appear but that the Defendant might be licensed by two Justices according to that Statute. *Sed per Curiam*, it being alledged, That he sold *sine aliqua licentia quacunque* (without any License whatsoever), that is sufficient. *Trin. 9 Geo.*

32 & 33 W.

And by a late Statute Persons are prohibited to sell *Brandy*, or other distilled Liquors by Retail, to be drank in their Houses, without a License, in the same Manner as common Alehouse-keepers are licensed, and the Offender is made subject to the same Rules, Penalties and Forfeitures, as those are who sell Drink without License.

Disorders in
suffering Tip-
pling and Tip-
plers.

By the Statute 1 Jac. Alehouse-keepers, &c. are prohibited to suffer Townsmen to sit tippling, upon Forfeiture of 10 s. to the Poor where the Offence was committed. 1 Jac. cap. 9.

Constable or Church-warden may levy it by Distress, which may be sold after six Days; and if that cannot be had, the Offender is to be committed till paid.

By 4 Jac. 1. c. 5. Townsmen sitting tippling, forfeit 3 s. 4 d. for the Use of the Poor, and being not able to pay it, shall be put in the Stocks four Hours; the Punishment must be within six Months.

Vintner keeping an Inn, and Inn-keeper, are within this Statute, *per 1 Car. 14.*

The Acts above-mentioned relate only to Townsmen sitting tippling.

But by 21 Jac. c. 7. any Person, be his Habitation where it will, is prohibited to sit tippling; the Conviction by the former Laws was to be by two Witnesses, but by this Statute one Witness, or the Confession of the Party before one Justice, shall be sufficient to prove the Breach of 1 Jac. 1. c. 9. and 4 Jac. 1. c. 5. and the Oath of the Party confessing shall be sufficient to convict any other offending at that Time; and a farther Punishment is added as to Ale-Sellers, *viz.* That on Conviction on any of the said Statutes, he shall be disabled to keep an Ale-house within three Years afterwards.

Hutt. 99.
3 Co. 32.

Upon this last Statute it hath been held, That if an Ale-house be suppress'd, and shall afterwards within three Years be licensed by two other Justices out of Sessions, the two first Justices, that suppress'd it, may do so again, and commit the Party for disobeying their Order.

But there is some Difference in the Manner of suppressing an Ale-house, which is *licensed*, and which is *not*; for in the first Case the Proceedings must be upon the Recognizance, the Condition whereof must be broken; or it may be by the
dictment,

dictment, and then the Disorders must be proved, and such as make a Nufance.

But the Sessions cannot suppress an Ale-house licensed by two Justices, unless 'tis for Disorder; for by the Stat. 5 & 6 Ed. 6. they have no such Authority. 2 Salk. 470.
5 Mod. 139. S.C.

And note, By 6 Geo. 1. c. 21. Licenses must be stamp'd, on Pain of 10 l.

Where an Ale-house is kept *without License*, the Justices may suppress it at Discretion, and no Appeal lies for denying a License. *M. 13 W.*

The Statute 1 Jac. 1. c. 9. against suffering Tippling in their Houses, enacts, That the Offender may be bound in a Recognizance to keep good Order, or may be committed as Alehouse-keepers without License, or indicted at Sessions.

An Inn-keeper not qualified, cannot be suppress'd but by Indictment for a common Nufance at Sessions, and the Judgment must be to disable him to keep that very Inn; but it may be continued and kept as an Inn by another Person of good Repute. *Hutt. 100.*

No License is necessary for those that sell Beer or Ale in Places where Fairs are kept; or where Forces are, to sell to the Soldiers. *Vide Stat. 5 & 6 Ed. 6. c. 25. and 3 Car. 1. c. 3.*

For the better Direction of those who keep Ale-houses, King James 1st, Anno 16. published these Articles by his Proclamation, the Substance whereof is, *viz.*

1. That the Justices meet once a Year either in *April* or *May*, and call before any two of them (*Quorum unus*) such Persons, who sell Ale, and inform themselves by Men of Credit what Persons are fit to keep Ale-houses, and then license them.

2. That in Licensing they take Recognizance with a Condition annexed (*ut postea*) and no other.

3. That the Person licensed to give such a Recognizance with Sureties, &c. for the Performance of the Condition to continue but for one Year, and whenever taken, to expire in *April* or *May* following, then to be renewed, if Justices think fit.

4. The Justices may call the Clerks of the Peace, Town-Clerks or Deputies, to attend them at their Meetings, to take Recognizances, &c. and to enter them at Sessions, that the King may be intitled to the Forfeitures, and ingross the Recognizance and Condition in Parchment, which is to be the Original, and give a Copy examined to the Ale-house-keepers.

5. They should keep a Book, in which the Names of all Alehouse-keepers should be kept, and they should attend the Justices with that Book.

Proclamation
without Parlia-
mentary Sanc-
tion cannot es-
tablish a Law.

Ale-houses.

6. They may take 18 *d.* for every Recognizance, and the Justice's Clerk 1 *s.*

7. If not licensed at the Meeting, he may have a License afterwards.

8. That none be licensed, who have not a convenient Lodging for a Traveller.

9. That Justices suffer none to sell, &c. without License, and that they proceed against Brewers at Quarter-Sessions for selling Beer or Ale to unlicensed Persons.

10. That the Clerks of the Peace in *Trinity-Term* every Year carry a Brief of all Recognizances into the Office of the Patentees, that there be no Concealment.

11. Justices in Sessions to inquire of the due Execution of these Articles.

Places fit for
Ale-houses.
Hutt. 100.

In any open Place in the Town, but not in By-Streets, or far distant from a Town.

For if built in any such Place, it may be presented, or indicted and suppressed, for 'tis a common Nuisance. So if the Inn-keeper, or the House-keeper is a lewd Person, and if of ill Fame, his House may be suppressed.

Persons not fit
to keep Ale-
houses.

Persons of ill Fame and Conversation amongst their Neighbours, Constables, Bailiffs of Hundreds, and generally all Tradesmen, who have good Trades, and sufficient for their Maintenance.

Alehouse-keeper continuing drinking in another Ale-house in the same Town where he dwelleth, being seen by the Justice, or proved by two Witnesses; or being drunk, and convicted upon an Indictment, or before the Justice, is disabled.

An Alehouse-keeper convicted and suppressed; if licensed again within three Years, the License is void, and he may be punished, as if he had no License; and so 'tis if he was convicted without being suppressed.

Neglect by Of-
ficers.

Officers neglecting to levy the Penalties upon 1 *Jac.* 1. c. 9. or if no Distress can be taken, and they do not certify the same within twenty Days, (on Conviction by one Witness before one Justice) they forfeit 40 *s.* to the Use of the Poor, to be levied by Distress by Warrant of one Justice; and if that cannot be had, then to be committed till paid.

Receiver of the Penalties shall be accountable to succeeding Officers.

Brewers selling Ale to an unlicensed Alehouse-keeper, unless for the Expence of his own Family, forfeits 6 *s.* 8 *d.* per Barrel, to be divided between the Poor and Prosecutor; the Poor's Moiety is to be delivered to the Church-wardens, &c. to distribute. Prosecution must be at Sessions.

By 3 *Car.* 1. c. 3. Officers neglecting to execute a Warrant of the Justice for the 20 *s.* for selling Ale without License, or refusing

§. 11, 12

refusing to whip the Offender, if no Distress can be taken, forfeit 40 s. to the Poor, or to be committed without Bail.

Ale and Beer ought to be sold by the Ale-Quart according to the Standard thereof, which is in the Custody of the Chamberlain of the Exchequer; but for several Years it hath been sold in uncertain Measures, and therefore by a late Act, 'tis enacted, That it shall be sold by the Ale-Quart or Pint, according to the said Standard and in a Vessel stamp'd or mark'd to be of the Contents thereof, either from the Exchequer, from the City of London, or from some City or Market-Town, where an Ale-Quart shall be made from the said Standard, and kept for that Purpose, under a Penalty not exceeding 50 s. nor under 10 s. for every Offence. *Vide postea*, of Indictments for this and other like Offences.

11 & 12 Will.
Vessel mark'd.

If an Inn-keeper or Alehouse-keeper sells in a Vessel not stamp'd, or refuses in bringing in the Reckoning to give the particular Number of Quarts or Pints, he shall not detain any Goods, if the Guest refuses to pay the Reckoning, but shall be left to his Action at Law.

The Collectors of the Excise must provide a full Ale-Quart and Pint for every Market-Town within their respective Divisions, or forfeit 5 l.

The chief Officer of such Town shall cause the Pots to be mark'd with W. R. and a Crown, for which he is to take one Farthing for each Vessel; if he neglect, or refuse so to do, he forfeits 5 l. and treble Damages shall be recovered by the Party grieved, and full Costs.

A Moiety of the Forfeiture goes to the Poor of the Parish where the Offence was committed, the other to the Prosecutor.

The Conviction by one Witness before one or more Justices.

The Prosecution must be within thirty Days after the Offence, and the Penalty is to be levied by a Warrant from the Justice by Distress, &c.

If an Action is brought for putting this Act in Execution, it must be laid in its proper County where the Fault was done, and not elsewhere; and if the Plaintiff is cast, he must pay treble Costs.

The Justices must give this Act in Charge at every Sessions; but it shall not extend to Colleges or Halls in the Universities.

No License shall be granted, but at a general Meeting of the Justices acting in the Division where the Person dwells, which Meeting for that Purpose is to be on the 29th of September yearly, or within twenty Days after. 2 Geo. 2. c. 28. §. 11, 12.

Ale-houses.

But this does not alter the Method of granting Licenses for keeping Common Inns, Ale-houses or Brandy-Shops in any City or Town Corporate.

A License to keep an Ale-house.

5 & 6 Ed. 6.
c. 25
Two Justices,
Quorum unus.

Suffex, to wit, **W**E whose Names are hereunto subscribed, being two of his Majesty's Justices of the Peace for the said County, do, according to the Form of the Statute in that Case made and provided, admit and allow T. P. of, &c. Victualler, to keep a common Ale-house in that House where he now dwelleth, for and during the Space of one whole Year next ensuing the Date hereof, so as the said T. P. doth not use any unlawful Games, during the said Time, within the aforesaid House, and so as he keep good Order and Rule therein, so long as it shall continue a common Ale-house, as aforesaid. Given under our Hands and Seals, &c.

The Recognizance and Condition upon such License.

Principal in
20 l. and two
Sureties in 10 l.
each.
5 & 6 Ed. 6.
c. 25.

Suffex, to wit, **B**E it Remember'd, That on the 29th Day of September in the 9th Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. T. P. of, &c. R. B. and W. N. came before us A. B. and C. D. Justices of the said Lord the King assigned to keep the Peace in the County aforesaid, and acknowledged themselves to owe to the said Lord the King in Manner and Form following; that is to say, the aforesaid T. P. in 20 l. and the said R. B. and W. N. each in 10 l. of lawful Money of this Realm, to be respectively levied of their several Goods and Chattels, Lands and Tenements, to the Use and Bechoof of the said Lord the King, his Heirs and Successors, if Defaults be made in the Performance of the Condition within written.

THE Condition of this Recognizance is such, That where as the above bounden T. P. is allowed by the Justice above-named to keep a common Alehouse in the House where he now dwelleth, &c. If therefore the said T. P. shall not, during the Continuance of the said Allowance or License, suffer any unlawful Games to be used in his House, but shall, during the said Time, use and maintain good Order and Rule therein, then this Recognizance shall be void, or otherwise shall remain in full Force and Virtue.

A Wit-

A Warrant to levy 10 s. for selling Ale in a Pot not marked.

Suffex, to **W** Hereas T. P. of, &c. Inn-keeper, was on wit, the Day of the Date hereof duly convicted before me, for selling Ale in his House, in the Parish of, &c. on the 23d Day of February last, to J. O. of, &c. in a Vessel not made, fixed and equalled according to the Standard for the Measure of Ale, remaining in the Custody of the Chamberlain of his Majesty's Exchequer, or in Proportion thereunto, not signed, stamped or marked, to contain an Ale-Quart according to the said Standard, by reason whereof he hath forfeited 10 s. These are therefore to require you to levy by Distress and Sale of the Goods of the said T. P. the aforesaid Sum of 10 s. and that you pay one Moiety thereof to the Church-wardens and Overseers of the Poor of the Parish of H. &c. where the said Offence was committed, for the Use of the Poor thereof, and the other Moiety to T. M. who prosecuted for the same. Given under my Hand and Seal, &c.

A Warrant against a Person for keeping an Ale-house without License.

Suffex, to **W** Hereas We whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the County aforesaid, have been credibly informed, That T. P. of, &c. doth keep a common Ale-house without License, contrary to the Law in that Case made and provided: These are therefore to will and require you to bring the said T. P. before Us, or one of us, or some other of his Majesty's Justices of the Peace for this County, to be dealt withal according to Law. And hereof fail not. Given under our Hands and Seals, &c.

Two Justices,¹¹
Quorum unus.

By 9 Geo. 2. c. 23. §. 15. any Justice of the Peace may convict a Person selling Beer, Ale or Strong Waters, or keeping a disorderly House, in the following Form, or to the like Purpose.

Lincolnshire, **C** D. is convicted on his, or her own Confession (or on the Oath of) of having sold Beer, Ale, or Strong Waters in the Parish of, &c. in this County, on the Day of without being duly licensed thereto by two Justices of the Peace. Given under, &c.

Ale-houses.

If 'tis for keeping a disorderly House, use the Words of *keeping a disorderly House*; adding, if Occasion, whether 'tis the *first, second, or third* Conviction: And this or the like Form not to be quashed for want of Form, saving Appeal to the next General Quarter-Sessions, &c.

A Warrant for summoning two Witnesses against an unlicensed Alehouse-keeper.

To the Constables, &c.

By 3 Car. c. 3.
One or more
Justices, &c.
are to minister
an Oath to two
Witnesses, &c.

Suffex, to **W** Hereas Complaint hath been made unto me, wit, That T. P. of, &c. doth of his own Authority, and without any lawful License, keep a Common Ale-house, and doth sell Ale, Beer, &c. in the Parish aforesaid; and whereas I am credibly informed, That J. O. of, &c. and F. O. of, &c. can justify the same: These are therefore to require you to give Notice unto the said J. O. and F. O. to come before me, &c. upon, &c. by Ten of the Clock of the Forenoon of the same Day, then and there to testify what they know concerning the Premises; whereof they are not to fail at their Perils. Given, &c.

A Warrant and Commitment, upon the Stat. 5 Ed. 6. against an Ale-house-keeper discharged.

To the Constable of, &c. and to the Keeper of the Gaol for the said County, &c.

5 & 6 Ed. 6.
c. 25. Two Ju-
stices, one of
the Quorum.

Suffex, to **W** Hereas T. P. of, &c. hath been duly discharged from selling Ale or Beer in a common Ale-house, situate and being in the Parish of H. in the County aforesaid; notwithstanding which Discharge, he hath afterwards, contrary to the Commandment of the Justices of the Peace of the said County, used to sell Ale and Beer therein: These are therefore in his Majesty's Name to command you the said Constable of, &c. that you apprehend the said T. P. and him safely convey to the * common Gaol at H. aforesaid, and to deliver him to the Keeper thereof, together with this War-

* If it be for
keeping an
Ale-house

without License, then the Form is, viz. Whereas T. P. of, &c. hath this present Day been lawfully convicted, for that of his own Authority he did obstinately take upon him to keep a common Ale-house in, &c. without the Admittance or Allowance of two Justices of the Peace for the County aforesaid.

rant:

rant: Commanding you the said Keeper to receive the Body of the said T. P. into your Custody, and him safely to keep by the Space of three Days without Bail or Mainprize, and not discharge him afterwards, until he enter into a Recognizance with two Sureties, according to the Form of the Statute in that Case made, that he will not keep any common Ale-house or Tippling-House, or use commonly selling of Ale and Beer. And hereof fail not. Given under our Hands and Seals, &c.

The Form of a Recognizance.

Suffex, *to wit*, B E it remember'd, &c. [*as before, p. 22.*]

THE Condition of this Recognizance is such, That where-
as the above bounden T. P. hath been lawfully con-
victed before us R. B. and W. N. two of his Majesty's Ju-
stices of the Peace for the County aforesaid, for keeping of a
common Ale-house in, &c. without being allowed thereunto in
the open Sessions, or by two Justices of the Peace for the said
County; for which said Offence the aforesaid T. P. was by us
committed to the common Gaol of the said County, there to re-
main for the Space of three Days, pursuant to the Statute in that
Case made and provided, and is now discharged from the said
Imprisonment: If therefore the said T. P. shall not keep any
common Ale-house, Tippling-house, or commonly sell Ale or Beer
from henceforth, without such Allowance, as aforesaid, then
this Recognizance to be void, or else, &c.

Note; This Recognizance must be certified at the next
Quarter-Sessions, which Certificate is by this Statute made
to be a Conviction of the Party offending, and an Authority
to the Justices in Sessions to assess 20 s. as a Fine upon the
Offender.

But this Law did not work the Reformation intended, be-
cause the Fine was seldom levied by reason of the Poverty of
the Offenders; or if it was levied, the Person would some-
times run away, and leave a Charge upon the Parish, which
was a Discouragement to the Prosecution.

Therefore by the Statute 3 Car. 1. c. 4. if they were not
of Ability, a corporal Punishment was added, and an easy
Way of Conviction, *viz.* by one Justice out of Sessions, and
a more speedy Remedy for the Fine.

A Warrant against an Alehouse-keeper without License, upon the Statute of 3 Car. 1. cap. 3.

To the Constable of, &c. and to the Church-wardens of, &c.
in the County aforesaid.

3 Car. 1. c. 4.
The first Con-
viction either
upon View,
Confession, or
Oath of two
Witnesses be-
fore one Justice.

Where he is ta-
ken, or where
Offence done.

Suffex, to **W** Hereas T. P. of, &c. Victualler, was this
present Day lawfully convicted before me,
for keeping of a common Ale-house in the Parish of, &c. not be-
ing thereunto lawfully licensed, according to the Form of the Sta-
tute in that Case made and provided, by reason whereof he hath
forfeited to the Poor of the said Parish the Sum of 20s. of law-
ful Money: These are therefore to require you, or one of you,
to levy the said Forfeiture, by distraining the Goods and Chat-
tels of the said T. P. and that you detain the same for the Use
aforesaid; and in Default of Payment of the said Sum of 20s.
within three Days after such Distress taken, that then you ap-
praise and sell the same to satisfy the said Forfeiture. And if
the said T. P. shall not have sufficient Goods upon which the
said 20s. may be levied, as aforesaid, or shall not pay the
same within six Days after the Date hereof, that then you the
said Constable do openly whip, or cause the said T. P. to be
whipped in the Parish of, &c. for the said Offence: And here-
of fail not, &c.

The Second and Third Conviction.

W Hereas, &c. [as in the former Warrant, to the Word
provided.] And whereas the said T. P. hath been once
lawfully convicted of the like Offence, and hath now offended the
second Time: These are therefore to require you to apprehend
the said T. P. and him safely to convey to the House of Correc-
tion, and to deliver him to the Keeper thereof, together with this
Warrant: Commanding you the said Keeper to receive the said
T. P. into your Custody and House, and him there safely to keep
for the Space of one Month, and to deal with him as an idle,
lewd, and disorderly Person. And hereof fail not, &c.

On the third Conviction for once say twice, for the second
say third, and after apprehend the said T. P. say, and him
safely to keep in your Custody until he shall be delivered thence by
Order of the Justices in their general Quarter-Sessions, and
that till then you deal, &c.

A War-

A Warrant to suppress an Ale-house.

To the Constable of the Hundred of, &c.

Suffex, to wit, **W** Hereas we are credibly informed upon the Complaint of several Persons, That T. P. of, &c. doth suffer rude and disorderly Persons to frequent his House in the Parish of, &c. being at this Time a common Ale-house, wherein they usually commit many great Disorders to the Disturbance of those who live near the said Place; for which Reason we R. B. and W. N. two of his Majesty's Justices of the Peace for the said County, one whereof is of the Quorum, do think it convenient to discharge and put away the common selling of Ale and Beer, or other Liquors in the said House: These are therefore to require you forthwith to go to the said T. P. and to charge him from henceforth not to sell or suffer to be sold any Beer or Ale, or other Liquors in the said House, and that you also cause the Sign of the said House to be pulled down. And hereof fail not, &c.

5 & 6 Ed. 6. c. 25.

Two Justices, Quorum unus, may discharge and remove where they think fit, the common selling of Ale. If he continue to sell afterwards 'tis a Contempt; and upon 1 roof any Justice may bind him to his good Behaviour, and

to appear at Sessions; and if he cannot find Sureties, then to commit him.

A Warrant against an Alehouse-keeper for suffering Tippling in his House.

To the Constable of, &c. and to the Church-wardens of the Parish of, &c.

Suffex, to wit, **W** Hereas it hath been duly proved before me this present Day, That T. P. of, &c. Vic-tualler, did upon the 27th Day of August last past, permit and suffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Ale-house of the said T. P. in the Parish aforesaid, contrary to the Form of the Statutes in that Case made and provided: These are therefore to require you the said Constable or Church-wardens to levy by Distress of the Goods and Chattels of the said T. P. the Sum of ten Shillings for the said Offence, for the Use of the Poor of the said Parish, and to detain the said Goods for the Space of six Days next after such Distress taken, if the said Forfeiture of ten Shillings shall not be paid to you within that Time; and that afterwards you appraise and sell the said Goods to satisfy the said Forfeiture, rendering the Surplusage to the Owner. And hereof fail not, &c.

1 Jac. c. 9
21 Jac. c. 7.
One Justice, View, Confession, or Oath of two Witnesses, and Prosecution within six Months; but by 21 Jac. c. 7. one Witness is sufficient. 1 Car. 1. c. 4. Vintners are within this Act, and the Ale house-keeper is disabled for three Years.

A War-

A Warrant and Commitment for Want of Distress.

To the Constables of, &c. and to the Keeper of the County-Gaol there.

* One Witness.

Suffex, to **W** Hereas upon the 10th Day of this Instant August it was duly * proved before me, That T. P. of, &c. in the County aforesaid, Victualler, did upon the 10th Day of July last past, suffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Ale-house of the said T. P. in, &c. contrary to the Form of the Statute in that Case made and provided. And whereas on the said 10th Day of August I did, by my Warrant lawfully executed, require the Constables and Church-wardens of the said Parish of, &c. or some of them, to levy the Sum of ten Shillings of lawful Money upon the Goods and Chattels of the said T. P. being forfeited by him, to the Use of the Poor of the said Parish, for the said Offence. And whereas I have been since credibly certified by, &c. Constable of, &c. That the said T. P. hath not sufficient Goods and Chattels, upon which any Distress may be taken to satisfy the said Forfeiture: These are therefore in his Majesty's Name, to command you the said Constable to take the said T. P. and to convey him safely to the Gaol aforesaid, and to deliver him there to the Keeper thereof, together with this Warrant: Commanding you also the said Keeper safely to keep and detain the aforesaid T. P. in your Custody, until the said ten Shillings shall be duly paid for the Use and Purpose aforesaid. Given under my Hand and Seal, &c.

A Warrant against a Tippler to levy the 3 s. 4 d. &c.

To the Constables and Church-wardens of the Parish of, &c.

4 Jac. 1. c. 5.
21 Jac. 1. c. 7.
One Witness.

* Inn or Victualling-house, as the Case is.

Suffex, to **W** Hereas it hath been duly proved before me, That T. P. of, &c. J. O. of, &c. and I. K. of, &c. being Inhabitants within your Parish of, &c. did on the 22d Day of this Instant August, remain and continue drinking and tippling in a * common Ale-house in, &c. by Reason whereof they have each of them forfeited three Shillings and four Pence to the Use of the Poor of the said Parish: These are therefore to require you the aforesaid Constables or Church-wardens, or some one of you, forthwith to levy by Distress and Sale of the respective Goods of the Persons abovenamed, the Sum of three Shillings and four Pence apiece, if they

they shall neglect or refuse to pay the same upon Demand; and in case of such Neglect or Refusal, and if no sufficient Distress can be found, on which to levy the said respective Forfeitures, that then you, or some of you, set the said Offenders in the Stocks, there to remain by the Space of four Hours; and for your so doing, this shall be your Warrant. Given under my Hand and Seal, &c.

Vide 9 Geo. 2. c. 35, 330. The Penalties on Alehouse-keeper harbouring any Person against whom Process has issued for Offences against the Customs or Excise.

Indictments.

THERE has been some Doubt, whether an Indictment will lie upon the Stat. of 5 & 6 Ed. 6. for keeping an Ale-house without the Allowance of two Justices, because they have an express Power of committing before any formal Conviction, and have Authority to take Notice of the Offence, and to commit; and the Statute tells us how the Party shall be convicted after his Commitment, viz. by the two Justices certifying the Recognizance to the next Sessions, which he is obliged to give before his Enlargement. 4 Mod. 2 Rol. Rep. 393. 145. Palm. 383.

This was the Opinion of Justice *Haughton* in *Michaelmas* Term, 21 Jac. but the later Opinions are, that where a Thing is prohibited by any Statute which is of a general Concern, and the Method of recovering the Penalties is in affirmative Words, that those shall not take away the general Way of proceeding by Indictment, unless it be by negative Words.

And this was the Opinion of *Holt Ch. Justice*, that an Indictment being a summary Way of Proceeding was more beneficial for the Subject; and therefore it seems reasonable that such a Method should be pursued. 'Tis prohibited by the Statute 22 Car. 2. to travel with more than five Horses at Length: This is a new Law, and a new Offence, and yet an Indictment will lie against the Offender, though a particular Punishment is directed by the Statute. But the other Judges *contra*.

4 Mod. 144.
King and Mar-
riot.

The Husband must be joined with the Wife in an Indictment for the Wife's keeping a disorderly House, because he must pay the Fine. *Hill*. 21, 22 Car. 2.

In Innholder letting his Beer to his Tapster for 14 s. per Barrel, he himself paying but 8 s. is indictable for Extortion. 9 Jac. 1. *Seff*. 1. *Middlesex*.

A Person was indicted for keeping an Ale-house, and selling Ale without License, but not concluding *contra formam Statuti*,

statuti, (against the Form of the Statute,) it was quash'd, for at Common Law this was no Offence, 1 *Saund.* 249. it being made so by Stat. 5, 6 *Ed.* 6. and 3 *Car.* 2.

But a Man may be indicted for selling Ale in black Pots not mark'd, and though it doth not conclude *contra formam Statuti*, 'tis well enough; for selling less than Measure is an Offence at Common Law. 1 *Vent.* 13. *S. C.* 1 *Sid.* 409. *Burgen's Case*.

'Twas moved to quash an Indictment for selling Ale on a Sunday in Time of Divine Service, for that by the Stat. 3 *Car.* 2. a summary Way before two Justices is directed, and quash'd accordingly. *Hill.* 5 *Annæ*, *Holme's Case*.

The Defendant was found guilty upon an Indictment for selling Ale without paying the Excise; but upon a Motion in Arrest of Judgment it was quashed, because it did not set forth to whom or at what Time it was to be paid, nor what Quantity of Ale he sold, so that a Conviction upon such an incertain Indictment cannot be pleaded to any other for the same Offence; besides in Criminal Cases the utmost Certainty is required, therefore the Quantity of the Offence ought to be set forth in this Indictment. *Mich.* 1722. *B. R.* The King versus Gibbs, *Mod. Caf. L. & E.* 58. *M. 8 Geo.* 1.

The Defendant was convicted on 3 *Car.* 1. c. 3. by which 'tis enacted, That none shall keep an Ale-house without License on Pain of Forfeiture of 20 s. to the Poor, &c. Moved to quash this Conviction; for that Alehouse-keepers selling Ale without License are punishable by former Statutes, particularly 5 & 6 *Ed.* 6. viz. That none should keep an Ale-house without a License, either granted in Sessions or by two Justices, 1 *Qu.* on Pain of three Days Imprisonment without Bail. Now it does not appear in this Case but that the Defendant might be licensed by two Justices of the Peace according to that Statute; and if so, then this Conviction ought to be quash'd: *Per Curiam.* 5 & 6 *Ed.* 6. is intirely out of the Case, because 'tis alledged in the Indictment, that the Defendant sold Ale contrary to 3 *Car.* and it being likewise averred that he sold it *sine aliqua licentia quacunq.*, the Objection that he might be licensed by two Justices of the Peace is of no Weight. *King and Ford, Trin.* 9 *Geo.* 1. *B. R.*

An Indictment for keeping of an Ale-house without License.

1 *Saund.* 248.
Syd. 409.

The Town and Borough of South-
wark in the County of Surrey. **B**E it remembred, That
at the General Sessions of the Peace of our Sovereign Lord the King, held at the
Court-house upon St. Margaret's Hill, within the Town and
Borough

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*Borough of Southwark in the County of Surrey, for the Town and Borough aforesaid, on Friday to wit, the eighth Day of January in the twentieth Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. before Sir William Turner, Knight, Mayor of the City of London, Sir Richard Brown, Knight and Baronet, Sir John Frederick, Knight, and Sir Thomas Bludworth, Knight, Aldermen of the said City, Justices of our said Lord the King, assigned to keep the Peace within the Borough and Town aforesaid in the said County, and also to hear and determine divers Felonies, Trespases, and other Misdemeanors committed within the Town and Borough aforesaid in the said County, by the Oath of, &c. (the Jury) honest and lawful Men of the Town and Borough aforesaid in the said County then and there sworn and charged to inquire for our said Lord the King, and for * the Body of the said City, it is presented, that John Falkener of the Parish of St. Saviours in the Town and Borough of Southwark in the said County of Surrey, Yeoman, on the sixth Day of December in the twentieth Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. and continually afterwards, until the Day of the Taking of the Inquisition at the Parish aforesaid, within the Town and Borough aforesaid in the said County, hath voluntarily, obstinately, and without any Admittance * or Allowance of two Justices of our said Lord the King assigned to keep the Peace within the Town and Borough aforesaid in the said County, taken upon him to keep, and hath kept a common Tippling House, and in the same Tippling House for the whole Time aforesaid, hath there commonly and publicly uttered and sold Ale, and other Drink to divers Liege Subjects of our said Lord the King to the said Jurors unknown, contrary to the Form of the Statute in such Case made and provided, and against the Peace of our said Lord the King, his Crown and Dignity.*

* It should have been for the Town and Borough aforesaid.

* The Allowance may be likewise at the Sessions.

This indictment was not thus concluded, namely (contrary to the Form of the Statute, &c.) but it was concluded as an Offence at Common Law, *in contemptum dicti Domini Regis nunc Legumque suarum ac contra pacem* (in Contempt of our said Sovereign Lord the now King, and his Laws, and against the Peace, &c.) and it being no Offence at Common Law to keep an Ale-house without License, it was for that Reason quashed.

Inns were allowed for the Benefit of Travellers, who have certain Privileges whilst they are in their Journeys, and are in a more peculiar Manner protected by the Law; 'tis for this Reason that the Inn-keeper shall answer for those Things which are stolen *infra Hospitium*, tho' not delivered to him to keep,

keep, and tho' he was not acquainted that the Guest brought the Goods to the Inn; for it shall be intended to be through his Negligence, or occasioned by the Fault of him or his Servants.

So if he puts a Horse to Pasture without the Direction of his Guest, and the Horse is stoln, he must make Satisfaction.

But if a Neighbour, who is not a Traveller, lodges in an Inn and loseth his Goods, or if the Guest is robb'd by his own Servants in the Inn, or by any one who came thither with him, or by leaving his Goods in one Room, when the Inn-keeper desired him to leave them in another, in such Cases he shall not be answerable.

An Indictment upon the Statute of the 4th of King James, cap. 5. for Tip- pling, &c.

Sussex, to **T**HE Jurors for our Sovereign Lord the King
writ, upon their Oath present, That T. P. of the
Parish of, &c. Yeoman, on the 28th Day of August in the
5th Year, &c. remained and continued drinking and tippling in
an Inn of J. T. within the said Parish in the County aforesaid
not being then, &c. contrary to the Form of the Statute in such
Case made and provided, and against the Peace of our said So-
vereign Lord the King, his Crown and Dignity.

For keeping of a disorderly House.

Sussex, to **T**HE Jurors for our Sovereign Lord the King
writ, upon their Oath present, That T. P. of, &c.
Vintualler, is a Man of a bad Conversation and Government,
and a Disturber of the Peace of our said Sovereign Lord the
King, and that the same T. P. at H. in the County aforesaid
on the 29th Day of August in the 5th Year, &c. did keep, hold
and occupy a certain common Tippling-house, and on the said 29th
Day of August in the 5th Year, &c. and also on divers Days
and Nights, as well before as afterwards, at H. aforesaid in
the said County, hath received and entertained in the said Tip-
pling House divers Men of a bad and suspected Conversation,
there tippling, swearing, and playing at unlawful Games, to
writ, at Cards and Dice at all Hours as well by Night as by
Day, by means whereof his Neighbours and other liege People
of our said Sovereign Lord the King there were very much
troubled, disquieted and disturbed, to the bad Example of other
Subjects of our said Sovereign Lord the King, and against the
Form of the Statute in such Case made and provided, and
against

against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

By a late Statute, as to selling Ale and Beer within the Bills of Mortality only, 'tis enacted, That after 24 June 1726, not less than one Pound, nor more than six Pounds, shall be paid yearly by every Victualler and Retailer of Beer and Ale, within the Bills of Mortality. 12 Geo. 1. c. 12.

That Commissioners shall be appointed by the King or the Treasury, to manage the said Duty, who may substitute such Officers as they shall think necessary, which Commissioners, or the major Part of them, shall grant Permissions for retailing Beer and Ale.

That no Victualler, &c. within the Bills of Mortality, shall sell Beer or Ale without a Permission first obtained, under the Hands and Seals of such Commissioners, or the major Part of them; and in order to obtain such Permission, the Victuallers, &c. shall every Year, within twenty Days after the 24th of June, or some Person for them, make Application to the Commissioners, &c. and then compound with them for a Sum of Money, to be paid for one Year; one Moiety of which Composition-Money shall be paid at the Signing of the Permission, and the other Moiety at the End of six Months next ensuing, which Permissions at the Expiration of one Year shall be sent to the Commissioners to be cancelled, and new Compositions made, and the like Permissions granted for the next Year.

Provido, That an Inn-keeper, Victualler, &c. leaving off retailing Ale and Beer, and discharging all Composition Money, and giving Notice thereof at the Office, &c. such Permission and Composition shall cease.

The Commissioners, &c. shall make Compositions according to the best Intelligence they can get of the Trade of the Compounder, and shall demand no more for each Permission, which shall be yearly accounted and paid with the other Money, to be raised by Compositions.

That no Victualler, &c. shall send Beer or Ale out of their Houses to drink, in any Pot, Cup or Vessel, less than a Gallon, in Ale Measure; but Beer or Ale may be drunk at the Door of the House, or in any Out-house, Shed or Arbour, Garden or Yard, belonging to the House, in less Measures.

Victuallers, &c. neglecting or refusing to take out a Permission, or to pay the Composition-Money, as it shall become due, shall for every Neglect, &c. forfeit 20 *l.* to be levied by the Laws of Excise.

That the Commissioners shall have the same Power as the Commissioners of Excise.

Annuitant. Apples and Pears.

Proviso, This Statute shall not alter or diminish any Power of the Justices of Peace, in licensing or regulating Victuallers.

Any Person sued for putting this Act in Execution, may plead the general Issue, and give the Statute and the Special Matter in Evidence; and if the Plaintiff be nonsuit, or the Defendant obtain Judgment on a Demurrer or a Verdict, he shall have treble Costs.

Alehouse-keeper knowingly harbouring any Person against whom Process has issued for Offences against the Laws of Customs or Excise, forfeits 100 *l.* and is rendered incapable of having a License for the future. 9 *Geo. 2. c. 35. §. 30.*

Annuitant.

ONE Justice may take an Oath, that the Nominee of the Annuitant was alive on the Day the Payment became due; and likewise may take an Affidavit of the due Execution of an Assignment, or a Will made of an Annuity; See 2 *Ann. c. 3. §. 23.* 4 *Ann. c. 6. §. 28.* 5 *Ann. c. 19. §. 22.* 6 *Ann. c. 5. §. 16.*

Apothecaries. See Juries.

Apples and Pears.

IF sold by Water-measure, it shall be round, and eighteen Inches and an Half Diameter within the Hoop, and eight Inches deep and no more, and so in Proportion for a greater or lesser Measure, and heaped.

He that buys or sells by other Measure, forfeits for every Offence 10 *s.* one Half to the Informer, and the other to the Poor of the Parish where the Offence is committed.

Conviction must be by the Oath of one Witness, before one Justice, Mayor, &c. and the Penalty is to be levied by a Warrant.

The Form of the Warrant.

To the Constable and Headborough of the Hundred of, &c.

W Hereas T. P. hath been duly convicted before me for selling Apples at L. on the 22d Day of January last past, in a Measure not round, nor eighteen Inches and an Half Diameter within the Hoop, or eight Inches deep, neither were the said Apples heaped in the Measure out of which they were sold, so that he hath forfeited 10s. These are therefore to require you forthwith to levy the said 10s. on the Goods and Chattels of the said T. P. by Distress and Sale thereof, rendering to him the Overplus; and that you pay a Moiety thereof to J. O. who first informed me of the said Sale, and the other Moiety to the Church-wardens and Overseers of the Poor of the said Parish of L. where the said Offence was committed, for the Use of the Poor thereof. And hereof fail not. Given under my Hand and Seal, &c. 1 Anna

Apprentices.

THE Statutes relating to Apprentices, Labourers, Masters and Servants may be reduced, viz.

Of these, there are three Sorts:

Apprentices, { To Trades, } 5 Eliz. c. 4.
 { To Husbandry, }
 { Poor Apprentices, } 43 Eliz. c. 2.

Concerning Apprentices to Trades, these Things may be observed upon the Statute 5 Eliz. c. 4. Apprentices to Trades.

- Apprentices to Trades. {
1. Who may take them, who not.
 2. Who shall be compelled to serve in Trades.
 3. The Manner of punishing or discharging Apprentices.
 4. How long they must serve.

1. Every House-keeper in any City, or Town Corporate, of the Age of twenty-four Years, and using any Art or Mystery there, may take any Apprentice, whose Term ought not to expire till he is twenty-four Years old. 5 Eliz. c. 4. Who may take them.

Apprentices.

Artificers in Market-Towns not Corporate, and who are Houholders, and of the Age of twenty-four Years, may take other Artificers Children Apprentices.

These Tradesmen following may take Apprentices, though the Parents of such Apprentices have no Lands, *viz.*

Bricklayers.	Linen-Weavers.	Smiths.
Brickmakers.	Mafons rough.	Shinglers.
Carpenters.	Millwrights.	Thatchers.
Coopers.	Millers.	Tilers.
Earthen Potters.	Plaisterers.	Tilemakers.
Fullers.	Ploughwrights.	Turners.
Helliers.	Sawyers.	Woollen Weavers.
Lime-burners.	Slaters.	Wood-burners.

Who may not take them.

These Tradesmen following shall not take Apprentices but their own Children, or the Children of such whose Parents have 40 s. *per Annum*, if they live in Corporate Towns, or 3 l. *per Annum* in Lands, if they live in Market-Towns not Corporate; the Ability of the Parents is to be certified, under the Hands and Seals of three Justices where the Land lieth, to the Head-Officer of the Place.

Clothiers dwelling in Corporate Towns.

Drapers.	Goldsmiths.	Mercers.
Embroiderers.	Ironmongers.	Merchants.

8 Eliz. c. 2.

And by a subsequent Statute, a Hatmaker is not to have above two Apprentices at one Time, upon Pain of being committed for a Month.

Woollen Cloth-workers, (except those who live in *Cumberland, Lancaster, Wales, Westmorland*, or Cities, Corporations, or Market-Towns) shall not take Apprentices, but their own Children; nor teach their Art to any, but to those whose Parents have a Freehold of 3 l. *per Annum*, and to be certified, &c. under the Hands and Seals of three Justices where the Land lieth: The Forfeiture is 20 s. *per Month*. This is repealed by 5 & 6 Will. & Mar. c. 3.

Cloth-worker.	Sheerman.	Taylor.
Fuller.	Shoemaker.	Weaver.

Having three Apprentices, shall likewise keep one Journeyman; and if above three Apprentices, then another Journeyman, on Pain of 10 l.

Concerning these Certificates, they were not much in Use when *Dalton* wrote, but now they are wholly disused; neither is there Regard of the Ability of the Parents whose Children

Children are placed to any of the Trades above-mentioned, or to any other Trade whatsoever.

'Tis probable when the Statute 5 *Eliz.* was made, it might be then intended, that if the Father had 40 *s. per Annum*, and bound his Son Apprentice to a Goldsmith in a Corporation, he might be able to give him a competent Fortune to set up his Trade; but such an Estate now will scarce be sufficient to make his Son a Cobler.

2. Every unmarried Person, and likewise every married Person, under the Age of thirty Years shall be compelled to serve in these Trades following, upon Request of any Person using the same.

Who shall be compelled to serve in Trades.

Arrow-head-maker.	Dyer.	Sadler.
Baker.	Farrier.	Sheerman.
Brewer.	Felt-maker.	Shoemaker.
Butcher.	Fletcher.	Smith.
Capper.	Fuller.	Spurrier.
Clothier.	Glover.	Tanner.
Cloth-worker.	Hat-maker.	Taylor.
Cook.	Hosier.	Tucker.
Currier.	Miller.	Turner.
Cutler.	Pewterer.	Woollen Weaver.

But then the Person, who is compelled to *serve* in these Trades must be brought up in the Trade, or must have used it for the Space of three Years or more, and the Retainer must not be for less than a Year.

Requisites to bring the Person within the Act.

But if he have Inheritance or Freehold for Life, of the yearly Value of 40 *s.* or be worth 10 *l.* in Goods, he is not compellable to serve.

Where not compellable.

The Ability of the Person must be allowed by two Justices, or by the Mayor or Head-Officer of a Town Corporate, where he dwelt for a Year together, with two Aldermen or Burgesses, under their Hands and Seals.

Who are Judges of the Person's Abilities.

He must not be retained in Husbandry, or in any Art or Science, nor be a Servant, or in Office, with any Gentleman or others, nor have a Farm in Tillage, wherein to employ his Labour.

In the same Sessions of Parliament, viz. 5 *Eliz.* a Law was made, That Owners of Ships or Vessels, or any Householder using the Trade of the Seas by Fishing, or otherwise, &c. might take and keep one or more Apprentices to be bound for ten Years, or under, by Writing indented and inrolled in the Town where such Apprentice dwells, if 'tis a Town Corporate; and if not, then in the next Town Corporate.

Mariners Apprentices, &c.

5 *Eliz.*

Since the Making this Act, a Mariner took an Apprentice by Indenture, and there was a Bond for Performance of Cove-

nants;

1 Lurw. 474.

nants; the Apprentice run away, the Bond was put in Suit, and the Obligee pleaded this Statute, and that the Indenture was not enrolled: But the Case was not argued, and so no Judgment given.

And now by a late Act, *Anno 2 Anna*, Provision was made for putting poor Boys Apprentices to Seamen; which see in Title *Seamen*.

The Time of Service must not be less than for a whole Year.

Vide 8 *Ann. c. 9. §. 32.* that gives 6 *d.* in the Pound for Sums not exceeding 50 *l.* and 12 *d.* in the Pound for every 20 *s.* more than 50 *l.* that shall be given in putting out Apprentice, Clerk or Servant, &c.

Stat. 35. The full Sum given to be wrote in Words at Length in the Indenture, &c.

Stat. 39. Indentures wherein the full Sum agreed on shall not be inserted, or the Duties not paid, or not stamp'd or tender'd to be stamp'd, shall be void, and the Clerk or Apprentice shall have no Privilege of Freedom, or using his Trade.

Stat. 40. Money given to put out Apprentices either by Parishes or publick Charities shall not pay any Duty; made perpetual by 9 *Ann. c. 21. §. 7.*

In *Woolstanton and Eutoscater, Pasch. 12 Geo. 2.* held that the Duty not being paid according to the Stamp Act, 8 *Ann. c. 9. §. 39.* the Apprentice could gain no Settlement under the Indentures, except in Case of a poor Boy put out by the Parish, or upon publick Charity; The same resolved in *Cuerden and Leland*.

A. undertook to take a poor Boy Apprentice in Case his Friends would cloath him; upon which the Boy's Grandfather agreed to furnish him with Cloaths to the Value of 30 *s.* that the Master should lay down the Money, and that he would repay him, which was done accordingly, and the Indentures drawn and executed; mentioned in the Indenture that the Master was to find Cloaths during the Apprenticeship, but no Mention of the 30 *s.* nor Duty paid for that Sum, nor the Indenture stamped.

Per Lee Ch. J. and the Court: The material Consideration in this Case will be, whether the 30 *s.* is such a Sum as ought to be inserted in the Indenture according to the Sense of the Act of Parliament? the Case of *Cuerden and Leland* is not a parallel Case with this, since the Money there paid was allowed to be such a Sum for which the Duty ought to be paid, and that it was only a Matter of Construction whether the Apprentice could gain a Settlement or not by Service under an Indenture, when the Duty for the Sum mentioned in it had not been paid; and the Court were of Opinion, that they were bound by the Act to look upon the

Binding

Binding and Service as having no Effect not even to gain a Settlement; but in the present Case the Master appears to be only a meer Stranger who lays out the 30 s. which the Grandfather promises to repay him; 'tis no more therefore than an Agreement by the Grandfather for the Cloathing of the Boy, and he appoints the Master to be his Agent to lay out the Money, and repay him; all this was done before the Binding; 'tis therefore not within the Act which intends such a Sum as is to be for the Master's Benefit, 'tis such a Sum as the Stamp-Duty ought not to be paid for. *Probyn J.* said, it must appear that the Money paid was the Consideration of the Master's taking him, and that it was for his Benefit, to bring it within the Intention of the Act; this finding Cloaths was before the Commencement of the Apprenticeship; if the Grandfather had agreed to have found him in Cloaths during the Time of the Apprenticeship, and for that Purpose given a Sum of Money to the Master, that would have been such a Sum as ought to have been inserted in the Indentures, and for which the Duty ought to be paid, since it would be for the Master's Benefit. *Pasch. 13 Geo. 2. King against The Inhabitants of Northoram.*

Upon Payment of the several Rates and Duties omitted to be paid, on or before the 29th of September, 1720. upon Monies given, paid or contracted for, with Apprentices, and to have the Indentures stamp'd, and tendering to be stamp'd, such Indentures omitted to be stamp'd at any Time before the 25th of Decemb. 1720. the same Indentures shall be good in Law, and may be given in Evidence in any Court, and the Apprentices therein named shall be capable of following their Trades as fully as if the Duties so omitted had been duly paid before, and the Persons who have incurred any Penalty by such Omission are discharged from the same. 6 Geo. c. 11.

Of the Stamp Acts as relating to Apprentices.

The Parliament are so indulging as to pass an Act almost every Sessions to set right or forgive such Omissions. And vide 14 Geo. 2. c. 41. §. 17.

Apprentices in Husbandry.

1. Who shall take Apprentices, and at what Age.
2. Who shall be compelled to serve, and at what Age, &c.

Every Husbandman keeping House, and using Half a Plow-Land in Tillage, may take an Apprentice by Indenture, who must be above the Age of ten, and under eighteen, and he must serve till twenty-one, or twenty-four, as the Parties can agree. Apprentices in Husbandry.

5 Eliz. c. 4.

And any Justice of Peace may compel fit Persons under the Age of twenty-one Years to be bound Apprentices in Husbandry, and to commit them upon Refusal, there to remain till bound to serve.

Hert. 164.

An Information was brought upon this Statute, for detaining an Apprentice in Husbandry, being bound till twenty-one, and for departing without a Testimonial. Two Judges were of Opinion, that it would not lie, because the Statute doth not extend to provide against the Departure of an Apprentice by Indenture, but an hired Servant; for an Action on the Case lies against the Receiver, and Covenant against the Party.

Servants in Husbandry.

Any Person between the Age of twelve and sixty Years may be retained in Husbandry, not being employed in Coal, Fishing, Glas, Mines, Sailing, or providing Grain or Meal for London; he must be neither Gentleman nor Scholar, nor worth 40 s. *per Ann.* in Lands, or 10 l. in Goods, nor Heir to 10 l. *per Ann.* or to 40 l. in Goods.

The Retaining, as well in Husbandry, as in the Trades above-mentioned, must be for a Year, and the Service must continue so long, and the Testimonial required by this Statute relates only to such Servants so retained, and not to our ordinary Menial Servants.

And *Note*; the Law construes a general Retainer, *i. e.* where no Time is mentioned, to be a Retainer for a Year.

Departure of either.

They are not to depart to serve in another Place without a Testimonial; if in a Town Corporate, under the Town-Seal, and the Seals of two Householdors there; if in the Country, then under the Seal of the Constable of the Parish where he last served. This must be registred by the Parson where the Master dwelleth; for which he is to have 2 d. The Form is,

This concerns only hired Servants in Husbandry, and nor Apprentices or Menial Servants; and therefore an Indictment for retaining a Servant without a Testimonial was quash'd, because it did not shew in what Trade.

Memorandum, **T**HAT W. G. Servant to W. N. of H. in the County of S. Husbandman, (or Brewer, as the Trade is) is licensed to depart from his said Master, and is at his Liberty to serve elsewhere, according to the Statute in that Case made and provided. In Witness whereof, &c. Dated the Day, Month, Year and Place of making thereof.

retaining a Servant without a Testimonial was quash'd, because it did not shew in what Trade. 1 Mod. 78. Hert. 164.

The Servant, who hath no such Testimonial to produce to an Officer where he is to dwell, shall be committed till he procure one; and if he doth not get one in Twenty one Days, or shews a false one, he shall be whipped as a Vagabond. The Master who retains a Servant without Testimonial, forfeits five Pounds.

If he do not his Duty, the Master may complain to one Justice, who may reconcile them if he can; and if the Fault shall by him be adjudg'd in the Apprentice, then the said Justice may send him to the House of Correction.

The Manner of punishing or discharging them.

'Tis true, there is no express Authority given to the Justice to send a disorderly Apprentice thither; but it seems to be warranted upon the Preamble of the Statute 7 Jac. c. 4. made for erecting such Houses, to punish idle and disorderly Persons: But the safest Way is to bind him over to the Sessions, and from thence he may be sent to the House of Correction.

Covenant by Infant, by his Guardian, that the Plaintiff being bound Apprentice by Indenture to the Defendant, that the Defendant did not keep, maintain, educate and teach him in his Trade of a Draper as he ought, but turned him away. Defendant pleaded, that at a General Sessions of the Peace an Order was made, that he should be discharged of the Plaintiff for his disorderly Living, and beating his Master and Mistress, and that Order was inrolled by the Clerk of the Peace; to which the Plaintiff demurred. Said for the Plaintiff, 5 Eliz. c. 4. does not give the Justices any Power to discharge a Master of his Apprentice in Case the Fault be in the Apprentice, but only to minister due Correction and Punishment to him. *Curia*: That has been over-ruled here, the Justices have the same Power of discharging upon Complaint of the Master, as they have upon Complaint of the Apprentice. 1 Mod. 286-7. 1 Vent. 174. *Watkins and Edwards*. Vide 1 Saund. 314.

Neither have the Justices any express Power to discharge an Apprentice, if the Fault is in him, as they have, if the Fault is in the Master; but it hath been held, and so is the Law now, that the Clause in this Act, which gives the Justices in their Sessions Power to inflict a corporal Punishment on a bad Apprentice, is rather an Inlargement than a Restriction of their Authority; for they cannot punish a bad Master, but may discharge a bad Apprentice; but they may either punish or discharge a bad Apprentice, as they shall think fit.

1 Mod. 286.
1 Saund. 314.
Hawksworth and Hillary.
1 Vent. 174.
Watkins and Edwards.

The Sessions in this Case have only a Conditional Power, viz. to discharge or punish, if one Justice cannot compose the Difference; and therefore Application ought first to be made to him.

If the Fault be found in the Master, then the Justice may bind him over to the Sessions, and four Justices there may discharge the Apprentice; which Discharge is to be inrolled by the Clerk of the Peace. Vide *Salk*. 470.

The Discharge must be under their several Hands and Seals; and therefore where the four Justices subscribed three Names, and there was but one Seal, the Order was quash'd. *Anna, B. R.*

But

But by the Opinion of *Holt, Chief Justice*, the single Justice hath Power to make an Order, which if the Master obey, then the Sessions have no Power; if he disobey, then upon Complaint made, the Justice may bind the Master over to the Sessions, and that they have no Power otherwise.

2 Salk 491.

But he agreed this was against the general Practice; for the Sessions have originally discharged several Apprentices without any Application to a Justice, and many such Orders have been confirmed *above*, which he would not unsettle. *Hill. 11 W. B. R.*

Dalt. 87.

King and Gill, Hill. 5 Geo. 1. resolved Sessions have original Jurisdiction to discharge Apprentice, but not to proceed in the Master's Absence, at least if he was not summoned.

The Master and Apprentice may agree to leave each other; and in such Case the Master may give Leave under his Hand to depart, and then one Justice out of Sessions may discharge him, by allowing the Cause of putting him away. 5 *Eliz. c. 4.*

6 Mod. 69, 70.

Covenant brought by the Master against his Apprentice for leaving his Service. *Holt, Chief Justice*, of Opinion, That if a Master give a License to the Apprentice to leave his Service, it cannot afterwards be recalled; therefore if the Master bring an Action of Covenant against the Defendant, for leaving his Service at *such a Time*, and the Defendant justifies by Virtue of a *License* at the Time, that upon such a Declaration the Master shall not give Evidence of his Apprentice leaving him at *any other Time*, because in this Case the Time is material, and not transitory as in Trespass.

2 Salk. 471.

One *Gately* a Mountebank kept a Stage in *Yorkshire*, and there he took one *Green* to be his Apprentice, and covenanted to teach him the Art of a Surgeon; and being afterwards with his Apprentice in *Middlesex*, he complained to the Justices that his Master did not teach him the Trade, and thereupon an Order was made to discharge him; but that Order was set aside; because though by Statute 5 *Eliz.* the Clause which relates to the *Serving an Apprenticeship* is in those general Words, *viz. Arts and Sciences*, under which Words a Surgeon may be comprehended, yet the other Words, which relate to the *Discharging Apprentices* extend only to the Trades therein mentioned, amongst which neither a Surgeon or Mountebank are mentioned.

It is said in 5 *Mod.* 140. that the Justices of Peace have no Authority to discharge an Apprentice, but where he was compelled by them to serve, and that in such Cases 'tis reasonable that the Contracts which were made by their Authority should be dissolved by the same Power; but they can't discharge any voluntary Agreement made between the Parties; if they make an Order for Payment of Servants Wages 'tis good, because they have Power to compel the Service; but for the Wages of a Coachman, or the like, they have no Power

Power, to make an Order because they can't compel a Man to serve in that Capacity. One *Reycroft*, a Justice of Peace in *Middlesex* made an Order for the Payment of a Seaman's Wages, and upon an Action brought against him the Plaintiff recovered 30 *l.* Damages.

It was resolved in *King and Amies, Trin. 7 Geo. 2. B. R.* that the Justices had Jurisdiction as to the Discharging Apprentices, and obliging the Master to refund as well in other Trades as those mentioned in the Statute; and that tho' it was formerly held that the Sessions could not make an original Order of Discharge, it has been of late ruled, and is now the established Law, that an Order on an original Application is good, and that the previous Application to one Justice is only discretionary. *Salk. 68. King and Johnson, S. P.*

So in *King and Cust, Pasch. 8 Geo. 2.* that an original Application to the Sessions is good, and that the Statute extends to Trades not mentioned therein, and that *King and Gately* was not Law as to that Point: In that Case the Boy was Apprentice to a Surgeon.

King and Collingbourn, Mich. 13 Geo. 1. King and Taunton, Hill. 6 Geo. 1. there the Justices said that the 5 *Eliz.* extended to all kind of Trades whatsoever.

In *Dillon's Case, Salk. 67.* the Court held first, that Justices may discharge an Apprentice, and may also order a Restitution of the Money, within the Equity of the Statute; Secondly, that if the Master be bound to answer at Sessions, and does not appear, tis a Forfeiture of his Recognizance; but yet the Justices at the same Time may proceed to make an Order against him. *Vide Salk. 490. S. P. resolved.*

By the Statute 5 *Eliz.* 'tis enacted, That upon the Appearance of the Master, four Justices may discharge the Apprentice, after one Justice hath endeavoured to compose the Matter in Difference. An Order was made to discharge an Apprentice; it was objected to quash it, that the Master did not appear, and therefore the Justices could not discharge the Apprentice: *Sed per Curiam*, the Statute must have a reasonable Construction, for if the Master should run away, the Apprentice might be discharged; but by the Order it appeared, that the Master was a Collar-Maker, which is not a Trade mentioned in the Statute, in the Clause of *Discharging Apprentices.*

Sessions can't discharge Apprentice in the Absence of his Master. *King and Tuttle, Hill. 2 Geo. at least if he was not summoned. King and Gill, Hill. 5 Geo. 1.*

One cannot be made an Apprentice without a Writing, therefore he cannot be discharged but by a Writing under the Hand of his Master.

Unkind Usage does not imply ill Usage within the Act, nor is refusing to continue him in his Service sufficient Ground

What shall be
a Cause of De-
parture on the
Master's Side.

On the Ap-
prentice's Side.

These in an
Apprentice.

The Duty of
Justices, upon
5 El. c. 4.

Forfeitures
how to be re-
covered and
applied.

How long they
must serve.

to discharge Apprentice; but it being set out in the Order, that he did not entertain him according to his Indentures, it was held sufficient. *Argles and Eastmans, Pasch. 8 Geo. 2.*

Not allowing Meat, Drink or Wages agreed on; this is a good Cause to be allowed by the Justice, &c. *F. N. B. 168, L. fo* is Beating him unreasonably. *F. N. B. 168. Let. 2.*

Any departing from his Service whatsoever, refusing to do any reasonable Service, is a Departure in Law; but as to that Part of the Act, which says, an Apprentice departing without a Testimonial, shall be whipped as a Vagabond, it must be an Apprentice in Husbandry, and one of full Age; for otherwise an Infant, who is the Son of a Gentleman, may be punished as a Rogue. *Winch 25.*

If he steal any Thing from his Master above the Value of 12 d. not delivered to him to keep, upon due Proof thereof made before one Justice, he may commit him to Gaol, together with those who persuaded him to commit the Felony, and those who received the Goods, knowing them to be stolen; but if under that Value, then they may be all sent to the House of Correction by one Justice; but according to *Dalton*, rather by the Sessions. See the Stat. 12 Anna, c. 7. in Title *Felony*.

The Justice who shall be absent once a Year at *Easter* Sessions, or six Weeks afterwards, when the Wages of Labourers, &c. shall be taxed, without a reasonable Excuse to be allowed by the rest of the Justices, upon Affidavit, forfeits 10 l.

They are to meet twice a Year, viz. between *Michaelmas* and *Christmas*, and between *Lady-day* and *Midsummer*, to give Order for the due Execution of the Act; and they are to have 5 s. *per Diem*, not exceeding three Days, to be allowed out of the Fines arising by Breach of that Law.

One Moiety to the King, the other to the Informer, other than such as are expressly otherwise appointed to be recovered by Action of Debt or Information, or upon Indictment at the Sessions; and notwithstanding the Forfeitures in Cities and Corporations are given to the Use of the Corporation for the Relief of the Poor, yet the Informer shall have his Part still, and that Part which was to be to the King, shall go to the Corporation. *Cro. Car. 316. Hob. 183. Moor 880.*

For seven Years; and none who hath not served that Time in any Art or Mystery, shall use the same, or set any to work thereon who hath not served out that Time; the Penalty is 40 s. *per Month*.

But Hemp-dressers, Makers of Hemp, Cloth, Nets and Tapestry, are excepted by the Statute of 15 Car. 2. c. 15.

At Common Law, any Man might use what Trade and as many as he would. This Liberty was first prohibited by the Statute of 37 E. 3. but a short Experience found such a Restraint

Restraint to be prejudicial, and therefore that Law was repealed the very next Year after it was made.

But in Proceſs of Time, this Liberty proved injurious to Trade in general; becauſe ignorant and unſkilful Men having no Reſtraint, did uſe many Trades which they did not underſtand, and by this Means the Publick was damaged, till ſuch Men were again reſtrained by the Statute, under a Penalty, though Ignorance is a ſufficient Punishment to any Man; and it may be, that this Law was made, not only that Workmen ſhould be ſkilful, but that Youth might be brought up in ſome lawful Trade. 11 Rep. 54. *Caſe of the Taylors of Ipſwich.*

Now in what Court this Penalty is to be recovered, it hath been a Queſtion; for it hath been held, That notwithstanding the Statute 31 Eliz. cap. 5. §. 7. which limits Informations upon this very Act to be proſecuted in the proper County where the Offence was committed; yet Informations were ſtill brought in the Courts above, becauſe the Attorney General was not expreſſly prohibited by that Law, in whoſe Name Proſecutions are made in the Crown-Office.

But afterwards, by the Stat. 21 Jac. c. 4. he is reſtrained; the Words of which Act are,

Viz. All Offences to be committed againſt any Penal Law, for which any common Informer may lawfully bring any popular Action, Bill, Suit, or Information, ſhall be commenced by Way of Action, Plaint, Bill, Information, or Indictment, before Juſtices of Aſſiſe, *Niſi Prius*, *Oyer and Terminer*, or before Juſtices of Peace of every County, &c. where ſuch Offences ſhall be committed, at the Choice of the Party who ſhall commence ſuch Suit, and not elſewhere, (that is, when the Party might bring the Action either above or in an inferior Court,) and that all Informations, &c. to be brought by the Attorney General or Informer in any Courts of *Weſtmiſter* for ſuch Offences, ſhall be void. This Clause was added by Serjeant *Rolle*.

This Statute hath been held to reſtrain Informations above, but not an Action of *Debt* by a common Informer, ſo that the Miſchief is the ſame ſtill, and the Statute wholly eluded.

But ſome Judges have held, That where-ever there is a Remedy below,

as by an Information, this Action ought not to be brought above, unleſs in *Midleſex*, where B. R. ſits. And this was agreed by all the Judges lately in *Hicks's* Caſe. 10 W.

Now the Reaſon given why an Action of *Debt* is not reſtrained, is, becauſe generally in Penal Statutes (eſpecially thoſe which were made before the Statute 21 Jac.) Direction is given for the Recovery of the Forfeitures, by Action of *Debt*, Information, or otherwiſe; in which Actions or Suits,

Suits, no *Wager of Law* or *Essoin* shall be allowed. By which Words, the Courts above do still retain the same Jurisdiction; because there are no *Essoins* or *Wager of Law* in inferior Courts. *Cro. Car.* 113, 146. 1 *Sid.* 400.

Salk. 373.

But in *Hick's Case*, 10 *W.* it was resolved, That the Statute 21 *Jac.* restrains the Jurisdiction of *B. R.* in *Actions of Debt* by common Informers, and that they cannot bring Debt there unless the Cause of Action arise in the County of *Middlesex*, where *B. R.* sits; but when a Remedy is given by Action by any subsequent Penal Law, such Action is not restrain'd to the proper County, though Chief Justice *Holt* was of Opinion, That where any subsequent Statute gives a popular Action, it must be laid in the proper County, within the Equity of the Statute 21 *Jac.*

Of using Trade without serving Apprenticeship. For Indictments in such Case, vide the Head of Trade.

1 *Mod.* 26.
King and Turnish.

Note, It hath been adjudged, that a Person serving as an Apprentice for seven Years, though not bound, is out of the Statute 5 *Eliz.*

Any Trade, in which there is an Art or Mystery, is within the Intent and Meaning of this Statute, so as it doth not purely consist in Labour, and so as the Party gets his Livelihood thereby; but then such Trade must be exercised in a Corporation, or Market-Town not corporate; for it hath been held, That the Statute extends to such, and not to Trades used in Villages, *viz.* it directs, That Householders in a Corporation, or in a Town incorporate, which is a Market-Town, and using any Art or Mystery there, may take Apprentices for seven Years: And that no Person shall exercise any Art, &c. which hath not been brought up therein for seven Years in Manner and Form aforesaid. And Justice *Twyssden* said, That he heard all the Judges of *England* declare, that the Stat. 5 *Eliz.* should not be extended farther than needs must.

The Words of the Statute are, *That it shall be enquired of, heard and determined in the Assises or General Quarter-Sessions of the Peace of the same County, &c.* Yet an Indictment for exercising the Trade of a *Goldsmith*, not being an Apprentice for seven Years, was found at a *Borough-Sessions*, and held good; but it was quash'd for another Reason, (*viz.*) because it was *presentant existit* for *presentatum existit*. *Mich.* 3 & 4 *W. & M.*

10 & 11 *W.*
cap. 11.
12 *A. C.* 13.

Where Soldiers may set up Trades.

Officers and Soldiers who have served the Crown, and not deserted, and who have formerly used any Trade, or were Apprentices, or any other Soldier, who is apt and able to practise any Trade, may set up the same, *viz.* Apprentices as if they had served out their full Time, and all others may set up Trades in any Place in the Counties where they were born; and if prosecuted for the same, then upon the General Issue pleaded, they shall be found Not guilty, and have treble Costs; but the Proof of their Service must be by a Certificate under the Hand and Seal of some Field Officer, or two Commission-Officers of the Regiment where he served, or some General Officer of the Army, This Certificate is

be proved by one Witness; or in Default of such Certificate, by the Oath of two credible Witnesses.

1. Who shall be bound, and by whom:
2. Who shall take them, and at what Age.
3. How the Money to put them out shall be raised and disposed.

Poor Apprentices.
43 Eliz. c. 2.

The Children of such Parents who are not able to maintain them, may be put out Apprentices; and the Parents refusing to suffer them may be bound over to the Sessions. *Dalt. c. 58.*

1. Who shall be bound.

But this must be by the Assent of two Justices; and the Overseers of the Poor, or the greater Part of them, are to place out such Children, and the Law hath made them Judges of the Disability of the Parents: And one Justice may compel any Person meet to be bound. *Dalt. c. 58.*

Or if he refuse send him to the House of Correction.

There is no Necessity of giving Money with them, 'tis discretionary in the Church-wardens whether they will give any or not. *Dalt. c. 58.*

Every Man of good Estate or Ability may be compelled to take Apprentices, or every Man who by his Profession or Manner of living must keep such Servants; for the Power given to Church-wardens to place them out, doth necessarily imply, that such who are fit to be Masters must take them.

2. Who shall take them.

Before the Statute 8 & 9 W. if a Master had refused to receive such an Apprentice, he was to be bound over to the Assizes, and if he refused to give Bond, he might be committed, or the Church-wardens and Overseers by the Consent of two Justices might fine him; which if he refused to pay, the two Justices might make a Warrant to levy it by Distress, &c. or he might be presented and indicted at Sessions, and there fined or imprisoned.

8 & 9 W. c. 30.

But now by that Statute, if one Church-warden makes Oath of the Refusal of the Master before two Justices, he forfeits 10 l. to be levied by Warrant of the said Justices, to the Use of the Poor; but the Party may appeal to the next Sessions, whose Order is final.

The Church-wardens and Overseers of the Poor, by an Indenture confirmed by two Justices, bound a poor Girl Apprentice to a Merchant; he appealed to the Sessions, and there it was discharged, and this Order of Sessions was confirmed by B. R. because by the aforesaid Statute Persons being compelled to take Apprentices, and an Appeal being given to the Sessions, they are now become the proper Judges what Person is fit to receive a poor Apprentice or not.

2 Salk. 491.
Minchamp's Case.
Salk. 67. and in 1 Lev. 84.
King and Gyllyflower, it was held, that the Justices may compel any body to take a poor Boy as an Apprentice.

The Justices may discharge an Apprentice, and order a Restitution of the Money; and if the Master is bound to appear at the Session, yet they may proceed to make an Order against him. *H. 11 W.*

The

The Church-wardens cannot place them to Masters in another Parish, but the Justices in Sessions may; and if there are not Masters fit to receive them in any Hundred, then they may be put out in the County at large; but this must be by the Sessions.

Lessee for Years of a Farm taketh an Apprentice, and the Term expires before the Apprenticeship ended, he must go with the Farm, if his Master will permit him; but where a Man taketh an Apprentice by reason of his Ability, and the Master dieth before the End of the Apprenticeship, he shall go to the Executor or Administrator, if he hath Assets; and if none, then he must return to the Parish where last settled.

A. took an Apprentice in Husbandry according to 5 *Elizabeth*. and died before the Time the Apprenticeship expired, leaving him impotent and a Cripple; the justices at Sessions order'd the Executors to keep the Apprentice; but this was quash'd in *B. R.* because of the great Inconvenience which might follow; for it may be the Executor has not Assets, and lives in another County. *Eyre, J.* said, that Apprenticeship was a personal Trust between Master and Servant, and determined by either of their Deaths; for by that the End and Design of the Apprenticeship can't be attain'd; perhaps the Executor may be of another Trade; admitted Covenant would lie against the Executor, but in that there is no Inconvenience, because the Executor may make his Defence by pleading no Assets, or Debts of a higher Nature. *Holt, C. J.* said, that by the Custom of *London* the Executor shall put the Apprentice to another Master of the same Trade; and in other Places it would be very hard to construe the Death of the Master to be the Discharge of the Covenant; he said it had been held, that the Covenant for Instruction failed, but that he still continues an Apprentice with the Executor, *quasi* Maintenance; the Executor is liable in Covenant, if he does not instruct him, or find him another Master. *King and Pech, Salk. 66.*

It was determined in the Case of a Servant, that serving out his Year with the Executor should gain him a Settlement; for it was the same Service, and under the same Contract; and as the Executor is obliged to pay the Servant his Wages, so is the Servant obliged to serve out his Time. *King and Laddock, Pasch. 15 Geo. 2. B. R.*

Clergymen are not exempted from taking Apprentices. *Dalt. c. 58.*

Salk. 381.
Queen and
Gold. 6 Mod.
163. S. C. and
there said, if
it had been
another kind
of Apprentice,

Indictment, for that a poor Boy being put out Apprentice pursuant to the Statute, the Master refused to provide for him; and this was held good since the Statute 8 & 9 *W. 3.* For since the Justices have Power to put out Apprentices, the Court will allow an Indictment for a Disobedience, either

Indictment would not lie.

not receiving, not providing for him, or for turning him away.

By the Overseers weekly or otherwise, by taxing every Inhabitant, Parson, Vicar, and Occupier of Lands, Houses, Tithes, &c. as they shall think fit.

3. How the Money raised.

Money given to put out poor Children Apprentices, if in Towns corporate, shall be employed by the Corporation; if in other Places, then by the Parson, together with the Constable, Church-wardens and Overseers, &c. or the greater Part of them; who if they refuse forfeit five Marks each of them to the Use of the Poor.

Stat. 7 Jac. c. 1.

The Master must give Security to repay what Money he takes with an Apprentice at the End of seven Years next ensuing the Date of the Bond, or within one Year after the Death of his Apprentice, if he die within that Time.

If no fit Persons to be Apprentices in the Place where the Money is given; it may be employed in the Parishes adjoining.

The Trustees must account in *Easter* Week to the two next Justices.

They must be above seven, and under fifteen; for if above that Age they cannot be compelled: But they must work; or go to Service, or be sent to the House of Correction, or bound over to the Sessions; or to the good Behaviour.

At what Age poor Apprentices may be bound.

7 Jac. c. 3.

The Man-Child shall be bound till he come to the Age of twenty-four Years.

Above the Age of ten Years, any Person may be bound by his own Agreement by Indenture, &c. and if above Twelve, he may be compelled by a Justice.

At what Age Apprentices to Trades upon Stat. 5 El. c. 4. may be bound. Vagrants and Rogues, &c.

And Note; By the Stat. 12 Ann. *Seff.* 2. c. 23. Such as have no legal Settlement, or Vagrants, or common Beggars for two Years past, (tho' formerly settled) or dangerous and incorrigible Rogues within that Act, may be forced to serve seven Years Apprenticeship to any that will take them; and may be afterwards sent to the Plantations, provided the Master give a Recognizance of 40 *l.* not to sell them to any Alien; and any Justice may take such Recognizance; and must transmit it to the next Quarter-Sessions, to be there filed. *vide Tit. Vagrant.*

1. Who may be compelled to work, and how punished if refuse. Labourers.
2. How long they must continue at work.
3. Punishment for departing, when they are to work by the Great.
4. For what Wages they shall work.
5. Punishment of giving greater Wages than allow'd, &c.

1. Who may be compelled to work.

He who hath no Lands of his own, or is not of some Trade or Mystery to get a Livelihood. *F. N. B.* 168. B.

The Church-wardens and Overseers, &c. may set such Person to work; and if he refuse, one Justice may send him to the House of Correction: So he may those that refuse to work for reasonable Wages.

5 Eliz. c. 4.

Persons brought up in Husbandry, or in any of the Arts or Trades before-mentioned, and not able to get a Livelihood, if under thirty Years of Age, and having no visible Means to maintain themselves but by Labour, may be warn'd by two Justices to get a Service by a certain Day; and if they neglect or refuse to be hired for a Year, they may be sent to the House of Correction, or bound over to the next Assizes or Sessions, and to be of the good Behaviour in the mean Time. *Dalt. c.* 58.

Harvest.
5 Eliz. c. 4.
sect. 22.

One Justice may put in the Stocks for two Days and one Night, such as he in his Discretion shall think fit to work, and command so to do, if they refuse in the Time of Harvest.

Artificers must likewise work in Hay-time and Harvest, and if they refuse, the Constable shall put them in the Stocks for the like Time; and the Constable neglecting therein forfeits 40 s.

Labourers.

In Hay-time and Harvest, Labourers may go into other Counties to work; but then they must have a Testimonial under the Hand and Seal of one Justice, to signify that they had not work where they lived the Winter before. 5 Eliz. c. 4. §. 23.

2. How long they must continue at work.

If they work by the Day, or by the Week, they must continue working from five in the Morning till after seven at Night, from the Middle of *March* to the Middle of *September*, and all the rest of the Year, from Twilight to Twilight; only from *March* to *September* as aforesaid, they are to be allow'd two Hours for Breakfast, Dinner, and Drinking; and from the Middle of *May* to the Middle of *August*, Half an Hour more for Sleeping; and all the rest of the Year, an Hour and an Half for Breakfast and Dinner; and for the Absence of every Hour, the Master may defalk a Penny out of the Wages. 5 Eliz. c. 4. §. 12.

3. Punishment for departing when Work is to be taken by the Great.

If they depart before it is finished (except for Non-payment of Wages agreed on, or with Leave of the Master, or being taken into the King's Service, or for other lawful Cause,) they are to be committed for a Month without Bail, and to forfeit 5 l. to the Party grieved, to be recovered by Action of Debt, &c. over and above the Costs and Damages as by Law may be recovered for such Offence. 5 Eliz. c. 4. §. 12, 13.

4. For what Wages Labourers to work.

(*Viz.*) The Wages of Artificers, Labourers and others shall yearly be assessed by the Sheriff of the County; this

by Virtue of the Stat. 5 Eliz. c. 4. but the Justices of Peace, or the greatest Part of them resident in the County, have the like Power in their * Sessions every *Easter*, or within six Weeks after. This Assessment by the Statute of Queen *Elizabeth* must be certified under their Hands and Seals to the Chancellor, &c. who thereupon sends Proclamations into every County and Corporation before the first of *September* following, which the Sheriff or chief Officer must cause to be proclaimed and enrolled by the Clerk of the Peace before *Michaelmas* ensuing; but if no Alteration is made in the old Rates, then there is no need of such Proclamation.

At to the Power the Justices of the Peace have in respect of Labourers Wages; first, where the Order is drawn generally for Payment of Wages, the Court will intend it to be for Labourers Wages, and will admit no collateral Proof to the contrary.

* 1 Jac. 2. c. 6.
sect. 2. c. 6.
By this Stat. it
need not be
certified into
the Chancery
but only pro-
claimed in the
County.
5 Eliz. c. 4.

Salk. 424.
King and Gre-
gory.
3 Bac. Abr.
58. S. P.
Queen and
S. P. resolved.

Wootton, Mich. 20 Ann. Cas. L. & E. 63.

But where the contrary appears on the Face of the Order, 'tis bad; for the Statute extends only to Servants in Husbandry. Salk. 442. King and London.

The Statute only gives them Power to set the Rates of Labourers Wages, and the Law has made such Construction thereof, as to give them a compulsory Power in order to the Payment thereof.

Vide Salk. 441.
King and
Gouch.

Tho' a single Justice may compel Payment, yet the Power of settling Wages is only in the Sessions; and a single Justice can't arrest the Party refusing to pay in the first Instance. *Bergold and Holloway, Hill. 8 Geo. 2. B. R.*

3 Bac. Abr. 558.

A Justice of Peace made an Order for Payment of a Seaman's Wages; in Action brought against him the Plaintiff recovered 30*l.* Damages.

Bycraft's
Case, 5 Mod.
140.

Motion to quash Justices Order at their Sessions for Servants Wages and Costs of Suit; they committed the Party to Prison for not performing it, which they can't do; they ought to have indicted him for not obeying their Order. *King and Pope, 6 Mod. 163.*

A Justice of Peace made an Order upon the Defendant, that he should pay *B.* so much Money for Labour and Work done, without so much as saying that he was his Servant. Quashed; for by the Court, this might be Carpenter's Work, &c. and the Justices have only Power in Case of Wages of reputable Servants, viz. Servants in Husbandry; and they should be very tender in quashing such Orders, 6 Mod. 91. *Green and Corbet*; but vide 1 Salk. 451. in which *Gould* held the Case of *King and Dummer*, an Order to pay for his Works and Labour done, which was held well; for the Court will intend it within their Jurisdiction upon the general Words, unless the contrary appears upon the Face of

the Order, as in 2 *Jon.* 47. where it was for a Coachman's Wages.

Every Justice, &c. who shall be absent at the Taxing the Wages, not being sick, or not having some reasonable Excuse, to be proved upon Oath, and allowed by the rest of the Justices, shall forfeit 10 *l.* one Moiety to the King, the other to the Informer, to be recovered by Action of Debt, Information, or otherwise. 5 *Eliz. c. 4. §. 17.*

2. Punishment of giving greater Wages.

He who gives more Wages, forfeits 5 *l.* and may be committed for ten Days without Bail: He who takes more Wages, and is convicted before two Justices, or a Head-Officer, shall be committed for twenty Days. But a Master may reward a Servant as he pleaseth, so as it be not by Way of Contract upon the Retainer.

3. Labourers in woollen Trade. 1 *Annæ.*

By the Statute of 1 *Annæ*, all Payments for Work done in the *Woollen, Linen, Fustian, Cotton, and Iron* Manufactures, must be in current Money, and not in Cloth, Victuals, or other Commodities; and all the Wool delivered to them to be wrought, shall be first weighed, and the true Weight thereof declared.

The Offender in either of these Cases forfeits to the Labourer double the Value of what shall be due for his Work.

But if the Labourer shall be guilty of any Fraud or Fault in his Work, then he must answer to the Owner double the Damages by him sustained.

Then as to determining the *Wages, Demands, Frauds and Deceits* of Labourers in *Woollen, &c.* it must be by any two Justices of Peace where the Controversy doth arise, who may examine Witnesses on Oath; but there lies an Appeal from the Order of the two Justices to the next Sessions after Notice of the said Order, whose Judgment shall be final; and if for the Appellee, then they may give Costs and Charges.

The Act is to continue for three Years, from the 24th of *January* 1703, and so to the End of the next Session of Parliament.

Menial Servants.

Concerning *Menial Servants*, these Things are to be observed.

1. Who may be compelled to serve.
2. The putting away a Servant before the End of his Time.
3. A Servant departing himself.
4. Assaulting his Master.
5. Concerning Wages.

1. Who may be compelled to serve.

All single Persons under the Age of Thirty may be warranted by two Justices to put themselves into Service at the Time fixed; and any Woman upwards of twelve and under four

Years, being unmarried, may be compelled by two Justices to go to Service; and if they neglect, and continue to live idly, having no visible Estate, or lawful Way to maintain themselves, may be sent to the House of Correction, or bound over to the Sessions, and to be of the good Behaviour in the mean time. 5 *Eliz. c. 4. §. 24.*

If a Woman-Servant marrieth, she must serve out her Time; 2. and if both Man and Wife agree to serve, they must perform the Agreement.

The Master cannot do it without some reasonable Cause to be allowed by one Justice, nor after the End of his Time, without a Quarter's Warning given before two Witnesses; if he is otherwise discharged, 'tis unlawful, and the Master forfeits 40 s. if he cannot satisfy the Sessions by the Proof of two Witnesses, that he was put away for reasonable Cause. 5 *Eliz. c. 4.*

2. Putting away a Servant before the End of his Time.

He ought not to be discharged by Reason of Sickness, or any other Disability by the Act of God.

The Law hath made the Justice of Peace the sole Judge, whether the Servant was put away for a reasonable Cause or not.

But they may depart from each other by mutual Assent.

Note; General Retainer shall be construed to be for a Year.

Co. Litt. 42. b.

If he depart before the End of his Term, being hired for a Year, without a Cause to be allowed by the Justice; or after his Term is expired, without giving a Quarter's Warning before two Witnesses; in such Case two Justices may commit him without Bail, till he give Security to serve for the Time agreed on. 3. Servant departing himself. *Vi'e Servants in Bail.*

Or by Virtue of the Statute of 7 *Jac. c. 4.* one Justice may send him to the House of Correction, there to be punished as an idle and disorderly Person.

But both Master and Servant may part by Consent, and when the Allowance of a Justice is not requisite, because 'tis either a putting away or Departing intended by the Statute. As to the Testimonial, it seems only to relate to Servants Trades and Husbandry.

Detaining Wages, or not allowing Meat, &c. is good Cause of Departure, but must be allowed by a Justice: Or the Master's Wife beats the Servant.

It was a Question whether an Indictment would lie for enticing a Servant, or an Apprentice out of his Master's Service, and to carry off his Goods, for 'tis but a private Injury, and not in its Nature publick; and therefore an Action on the Case lies for enticing; but Trespas will lie for taking him out of his actual Service: And the Court upon a Motion in Arrest of Judgment was of that Opinion, that an Indictment would not lie. *H. 2 Anna.* 6 *Mod. 99.* Queen and Daniel. 6 *Mod. 239.* Queen and Collingwood, S. P. cited and agreed, *Mod. Caf. 88.*

4. Servant assaulting his Master.

A Servant or Workman assaulting his Master ; one Justice may bind him to the Good Behaviour, and so to the next Sessions.

Or two Justices may commit him for a Year or less, according to their Discretions ; the Proofs must be made before the Justices committing, either by the Confession of the Servant, or the Oath of two Witnesses.

All Retainers, Promises or Payment of Wages contrary to the Statute, and all Writings and Bonds for that Purport, are void.

5. Wages.

If the Master put away the Servant, he must have Wages to the Time he served ; but if the Servant depart himself before the End of his Time, he loses all his Wages.

If he is retained according to the Statute for a Year, and the Master dieth within that Time, the Executor must pay the Wages ; otherwise, if the Retainer was not for a Year.

His Wages ought not to be abated in Respect of Sicknels ; or any other Disability by the Act of God.

If the Master give, or the Servant take greater Wages than allowed by the Statute, two Justices may commit the one for ten Days, and the other one and twenty Days without Bail ; and the Master also forfeits 5 *l*.

Warrants upon the Statute of 5 *Eliz. c. 4.* concerning Apprentices.

A Warrant against a disorderly Apprentice.

To the Constable, &c.

5 *Eliz. c. 4.*
He may be sent to the House of Correction.

Suffex, to wit, **W** Hereas Complaint hath been made unto me by T. P. of, &c. Taylor, That J. O. now being an Apprentice to him, is not only negligent but a stubborn and disorderly Servant, and doth very much misbehave himself towards his said Master : These are therefore to command you to bring both the said Master and his said Apprentice before me, or some other Justices of the Peace for the said County, to be examined concerning the Premises ; and further, that such Order and Direction may be taken between them, as to Justice doth appertain. Given under my Hand and Seal, &c.

A Warrant

A Warrant against a Master for abusing his Apprentice.

To the Constable, &c.

Suffex, to wit, **W** Hereas Complaint hath been made unto me by R. J. Apprentice to R. N. of the Parish of, &c. Weaver, That the said R. N. doth not allow unto his said Apprentice sufficient Meat, Drink, and Apparel, but hath often immoderately corrected him without any just Cause, &c. These are therefore (as in the former Warrant.) 5 Eliz. c. 4.

This Warrant must be made by the Justice where the Master dwelleth; and if the Justice cannot reconcile them, he may bind the Master over to the next Sessions, where four Justices, *Quorum unus*, may discharge the Apprentice under their Hands and Seals. Or Mayor or Head Officer of a Corporation.

The Discharge.

Suffex, to wit, **W** E H. P. T. N. N. S. and R. B. four of his Majesty's Justices of the Peace (one whereof is of the Quorum) for the County aforesaid, having heard and examined the Matter in Difference between R. J. an Apprentice to R. N. of, &c. and it appearing to us that the said R. N. hath not allowed his said Apprentice sufficient Meat, &c. and hath several Times beaten him very immoderately without any just Occasion: We do therefore, for the Cause aforesaid discharge the said R. J. from his said Apprenticeship; And do hereby, under our respective Hands and Seals, pronounce and declare, That the said R. J. is discharged from being any longer an Apprentice to his said Master. Witness our Hands and Seals, &c.

This Discharge must be enrolled by the Clerk of the Peace, or Town-Clerk, which shall be good against the Master, his Executors and Administrators.

A Warrant against an Apprentice for departing from his Master.

To the Constable, &c.

5 Eliz. c. 4.
The Justice may grant this Warrant upon Complaint of the Master, and he may reconcile the Matter, if he can. But I do not see how he can punish an Apprentice by Indenture; the Sessions may.

Suffex, to wit, **W** Hereas Complaint hath been made unto me by W. B. of L. &c. That W. C. his Apprentice hath lately departed from his Master, contrary to Law: These are therefore in his Majesty's Name to command you, That you apprehend the said W. C. as soon as he can be found within your several Limits, or in either of them, and to bring him before me, or some other Justice of Peace for this County, to answer the Premises. Given under my Hand and Seal, &c.

An Information will not lie in this Case; but an Action on the Case against him who receives an Apprentice by Indenture, and an Action of Covenant against the Apprentice himself.

Poor Apprentices upon the Statute 43 Eliz. c. 2. Precedents concerning them.

A Warrant directed to the Officers to bring in the Names of such who are fit to be bound, &c.

To the Church-wardens and Overseers of the Poor of the Parish of B. in the County of Suffex, and to every of them.

43 Eliz. c. 2.
Two Justices,
Quorum unus.

Suffex, to wit, **T** Hese are in his Majesty's Name to Command you, That on Monday next, the 21st Day of this Instant August, you bring unto us in Writing at the House of J. T. of, &c. the Names of such poor Children of your Parish, whose Parents you shall not think able to maintain them, and the several Ages of such Children; which said Children, or such as you shall think fit to be put forth Apprentices, you are to bring before us at the Time and Place aforesaid: And likewise that you do then and there present unto us in Writing the Names of such Inhabitants of your Parish, especially such who have not already taken such poor Children Apprentices, to whom you shall think fit such Children may be placed, and that you give them Notice that they are then required to appear before us to shew Cause why such Children may not be bound to them; and that you be then also there present; and fail not. Given under our Hands and Seals, &c.

A War-

A Warrant against a Master to levy the Penalty of 10 l. for refusing to receive an Apprentice.

Suffex, to **W** Hereas R. J. a poor Male Child, was by the
writ. Church-wardens and Overseers of the Poor of
the Parish of, &c. by and with the Assent of R. B. and W.
M. two of his Majesty's Justices of the Peace for the said County,
lately placed and bound by Indenture as an Apprentice to T. P.
of, &c. to dwell with him from the Date of the said Indenture,
until the said R. J. should attain his Age of twenty-four
Years, pursuant to the Statute in that Case made and provided.
And whereas J. O. one of the Church-wardens of the Parish
of, &c. hath made Oath before us, That the said T. P. doth
refuse to receive the said R. J. and provide for him, as by Law
he ought to do, and doth also refuse to seal a Counterpart of
the said Indenture: These are therefore in his Majesty's Name
to command you, &c. to levy the Sum of 10 l. by Distress and
Sale of the Goods of the said T. P. for the Use of the * Parish
of, &c. And hereof fail not. Given under our Hands and
Seals, &c.

8 & 9 W. 3. cap.
30. Sect. 5.
Two Justices;
recite the Indenture.

* Where the
Offence was
committed.

An Indenture for placing a poor Apprentice.

T HIS Indenture, &c. witnesseth, That A. B. and
C. D. Church-wardens of the Parish of — in the
County of — and E. F. &c. Overseers of the Poor of
the said Parish, by and with the Consent of two of his Ma-
jesty's Justices of the Peace of the said County, whose Names
are hereunto subscribed, have put and placed, and by these
Presents do put and place L. E. a poor Child of the said Pa-
rish, Apprentice to B. N. of, &c. with him to dwell and serve
from the Day of the Date of these Presents, until the said Ap-
prentice shall accomplish his full Age of, &c. according to the
Statute in that Case made and provided, during all which
Term the said Apprentice his said Master faithfully shall serve
in all lawful Businesses, according to his Power, Wit, and A-
bility, and honestly, orderly and obediently in all Things demean
and behave himself towards his said Master, and all his, du-
ring the said Term; and the said B. N. for himself, his Ex-
ecutors and Administrators, doth Covenant and Grant to and
with the said Church-wardens and Overseers, and every of
them, their Executors, Administrators and Successors, That he
the said B. N. the said Apprentice in the Trade of, &c. which
he now useth, shall and will teach and instruct, and also find
and

and provide and allow unto the said Apprentice convenient and sufficient Meat, Drink, Washing, Lodging, Apparel, and all other Things necessary and fit for such an Apprentice, and also provide that he be not any Way a Charge to the said Parish, or its Parishioners, and keep them indemnified, &c. In Witness, &c.

We *W. B.* and *E. S. Esqs*; two of his Majesty's Justices of the Peace for the County aforesaid, do hereby declare our Consent to the putting of the said *L. E.* Apprentice to the said *B. N.* according to the Intent and Meaning of this Indenture.

The Church-wardens and Overseers of the Poor, by the Assent of two Justices of the Peace, bound *J. N.* a poor Child of the Parish, to *W.* an Attorney, as his Apprentice, and there was an Appeal to the Sessions; the Sessions order *W.* to seal the Counterpart of the Indenture, which he refused, and removed it by *Certiorari* into King's Bench. Moved to quash the Order, because in the Clause of the Indenture it was said, that the Master at the End of the Term should give his Apprentice two Suits of Cloaths, one for Holidays, the other for Working days. Upon Debate the Court held this to be ill; for the Justices, the Term of his Apprenticeship being expired, can't order him Wages, they must only order him a Maintenance as an Apprentice, and can't order him any Thing after the Term is ended; so that the Order of Sessions must be quashed. *P. 13 Ann. B. R. Queen against Wagstaff, Foley's Case.* In a Manuscript Report of that Case there were three other Exceptions, but it was quash'd because that Part of the Order was unreasonable, and the Defendant could not accept the Apprentice without complying with the Covenant.

One to whom a poor Boy is bound Apprentice, may assign him over, and the Justices can't avoid such Assignment; they may punish him if he does not provide for his Apprentice or instruct him, but they are not concerned in the manner of doing it, whether he does it himself, or assigns him to another. *H. 3 Geo. 1. Barnes's Case, Foley.*

Per cur. The Justices can't try an Assignment which is a private Right, in such a collateral Manner, it being a Matter of private Concern, which must be tried in a Civil Action; and tho' it can't pass as an Assignment, yet it will enure by way of Covenant and Contract between the two Masters, to serve the latter, and no Inconvenience can follow; for if the second Master misuses the Apprentice, Covenant will lie against the first Master. *Ca. & Ref. 101. S. C.*

Vide Castor and Aicles, Salk. 68. That such Assignment was good by way of Covenant, tho' it was not an Assignment to pass an Interest; for one could neither be bound Apprentice

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prentice nor discharged without Deed ; and held the Boy gain'd a Settlement under such Assignment. The Case of the King and the Inhabitants of *Dim-Church*, which was *Mich. 14 Geo. 2.* is still stronger ; for there a Pauper was bound to a Certificate Man in the Parish of *A.* and by him assign'd by Deed Poll to another Person in the Parish of *B.* and it was held the Pauper gained a Settlement by his Service in *B.*

In *King and East Bridgford, Mich. 13 Geo. 2.* A Pauper was bound for nine Years at *A.* and lived there four Years, his Master died ; his Widow assigned him to a Certificate Man by Parol, who assigned him to a third Person, where he lived out his Time ; and held that this Certificate Person was not incapacitated from assigning him, and that he gain'd a Settlement.

Servants.

Warrants concerning them.

Against a Servant departing before the End of his Time.

Suffex, to **W** Hereas *W. G. being lawfully hired and retained in the Service of W. N. of, &c. for the Space of one whole Year, is lately departed from his said Service without the Leave of his Master, and before the End of the said Term : These are therefore in his Majesty's Name to command you, &c. that you apprehend the said W. G. and bring him before us, or some other of his Majesty's Justices of the Peace for this County, to find sufficient Sureties faithfully to serve his said Master, according to the Agreement between them ; and if he shall refuse so to do, that then you cause him to be convey'd to the common Gaol of the said County, there to remain till he shall find such Surety as aforesaid. Given under our Hands and Seals.*

5 Eliz. c. 4.
Two Justices.
One Justice
may allow the
Cause of De-
parture.

Or he may be sent to the House of Correction by this
Mittimus.

To the Keeper, &c.

Suffex, to **I** Send you herewithal the Body of *W. G. late of, &c. being an idle and disorderly Fellow, and one who will not continue in any Service, nor follow any honest Course of Life ; and I require you thereby to receive the said W. G. into your Custody, and to keep him safely until he shall be from thence delivered by due Course of Law ; and in the mean Time to make him work, and to give him such moderate*
Correction

7 Jac. c. 4.

Apprentices.

Correction as to you shall seem necessary; and that at the next Quarter-Sessions you give an Account what you have done concerning this Precept: And hereof fail not. Given under my Hand and Seal, &c.

A Warrant for Wages.

To the Constable, &c.

Wages.

Suffex, to **W** Hereas Complaint hath been made unto me wit, by J. C. late Servant of T. P. of, &c. That he the said J. C. being lawfully hired by his Master, did serve him for the Space of, &c. and that the said T. P. doth now refuse to pay the Wages which are justly due to his said Servant for the Time he hath served him: These are therefore to require you to bring the said T. P. before me, or some other Justice of Peace for this County, to answer the Premises; and that you give Notice to the said J. C. to be then and there present to make good his Complaint. Given under my Hand and Seal, &c.

To command a Woman, that works at her own Hands, to go to Service.

To the Constable, &c.

5 Eliz. c. 4: Suffex, to **W** E R. B. and W. N. two of his Majesty's Women of the wit, Justices of the Peace for the County aforesaid, being informed, That S. W. of, &c. is a Person of a-ble Body, and not having any visible Means to maintain her self but by Labour, doth refuse to go to Service, but liveth by working at her own Hands: You are therefore required forthwith to give Notice to the said S. W. that she put her self into some Service before Michaelmas Day next ensuing; and she is hereby likewise commanded to conform herself hereunto. Given under our Hands, &c.

he sent to the House of Correction, or bound over to the Sessions. Dalt. c. 1: If she refuse, she may be committed till she become bound to serve.

A Warrant

A Warrant to levy 40 s. on a Master, for putting away a Servant before the End of his Term, without a sufficient Cause to be allowed by one Justice, or a Quarter's Warning before the End of the Term; but then the Retainer must be either in the Arts or Mysteries mentioned in the Statute; as *Baker, Brewer, Butcher, &c.* or in Husbandry; for the Statute doth not seem to extend to common hired Servants, tho' the Practice is otherwise.

To the Constable, &c.

Suffex, to **W** Hereas it hath been duly proved upon Oath wit, before us, That R. C. of, &c. Baker, hath put away N. V. his Servant (being lawfully retained) before the End of the Term agreed on between them, contrary to the Statute in that Case made and provided: These are therefore to require you to levy the Sum of 40 s. forfeited by him for the said Offence, by Distress and Sale of the Goods of the said R. C. rendring unto him the Overplus. And we do hereby require you to bring the said * 40 s. into Court at the next General Quarter-Sessions to be holden, &c. except the said R. C. shall in the mean Time shew some reasonable and sufficient Cause to be allowed before two Justices of the Peace, or one at least, within the County aforesaid, for putting away his said Servant in Manner as herein and hereby alledged: And hereof fail not. Given at the General Quarter-Sessions of the Peace held for the County aforesaid at L. &c.

* Because the Party hath Liberty to prove by two Witnesses at the Sessions the Cause, &c. to save his Forfeitures, if the single Justice, out of Sessions.

or two of them, shall not allow the Cause

A Warrant for the Relief of a Servant out of Service.

To the Constable, &c.

Suffex, to **W** Hereas I am informed, That F. C. hath been 43 Eliz. c. 2. wit, lawfully hired, and served for one Year in the Parish of, &c. so that now he hath acquired a legal Settlement

ment there: And whereas the said F. C. hath complained unto me, that he being discharged from his late Master, cannot find himself a Service, and is thereby destitute of any Means to support or relieve himself, otherwise than by such Service or Labour, which he is willing to perform: These are therefore to require you, that upon Receipt hereof you set the said F. C. to work, and provide for him according to Law. And hereof fail not. Given under my Hand and Seal, &c.

21 H. 8. c. 7.

The Statute of 21 H. 8. cap. 7. which makes it Felony for a Servant to go away with his Master's Goods to the Value of 40 s. with an Intent to steal or imbezil them, doth not extend to Apprentices, but to Servants above eighteen Years old.

But the Goods must be deliver'd to them to keep, for if a Bond be deliver'd to keep, and a Servant receives the Money and goeth away, this is not Felony, because he did not receive it by the actual Delivery of the Master. 3 Inst. 105.

So 'tis if the Master deliver Cattle to the Servant, and he sell them in a Market or Fair, and goeth away with the Money. 3 Inst. 105.

An Indictment upon the Statute of the 21 H. 8. c. 7. being the Statute before- mentioned.

Suffex, to **T**HE Jurors for our Sovereign Lord the King wit, upon their Oath present, That W. N. of H. in the said County, Gent. on the eighteenth Day of August in the fifth Year, &c. in the Mansion-house of him the said W. N. at H. aforesaid in the said County of Suffex, did deliver to one J. C. of H. aforesaid, then a Servant of him the said W. N. retained for one whole Year, and then being of the Age of twenty Years, five Pounds in ready Money, of the proper Goods of him the said W. N. with that Intent, that the said J. C. should keep the same safely, for the Use of the said W. N. his then Master, yet the said J. C. on the said eighteenth Day of August in the Year above-mentioned, (not being then an Apprentice to the said W. N.) at H. aforesaid in the said County, hath maliciously and feloniously withdrawn himself, fled and gone away from his Master with the said five Pounds of the said W. N. then his Master, to the Intent to steal the said five Pounds contrary to the Trust and Confidence to him put by the said W. N. then his Master, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided.

And Note; By an Act made 12 of the late Queen, If any 12 Ann.
 Servant purloins, imbezils, or makes away his Master's Scil. 1. c. 7.
 Goods, &c. to the Value of 40s. it is Felony without Be-
 nefit of Clergy: But this is not to extend to Apprentices
 under fifteen Years of Age. *Vide Felonies.*

Indictment for that the Defendant at such a Day and Place
did unlawfully cause, intice, and procure one W. R. the Ser-
vant or Apprentice of one R. R. to depart and absent himself
from the House, Shop and Service of the said R. R. his Ma-
ster, and did then and on divers Days before unlawfully seduce
the said W. R. unlawfully to take and carry away two hun-
dred Carolina Hats of the Value of, &c. of the Goods and
Chattels of the said R. R. out of his House and Shop, and did
then and there unjustly take, receive and had those Goods and
Chattels, knowing the Goods and Chattels aforesaid to be the
Goods of the said R. R. and that the said W. R. was the Ser-
vant of the said R. R. The Defendant was found Guilty,
 but the Judgment was set aside, because *enticing an Appren-*
tice to leave his Service, is a private Injury, for which an
Indictment will not lie, but an Action on the Case, per quod
servitium amisit, (by which he lost his Service.) 'Tis true,
 an *Inticing to imbezil Goods* is indictable, but in this Case no
 Place was laid where the Goods were taken away.

Indictment for *Inticing an Apprentice to take away his Ma-*
ster's Goods. The Defendant was convicted; but adjudged
 that this Indictment was ill, because it did not set forth that
 the Apprentice did *actually take away any Goods*; for it is
 not sufficient to lay an *Inticement*, without some *Act done in*
Pursuance thereof. 'Tis true it sets forth that the Defen-
 dant did receive the Goods, which implies that they were
 taken away, but a Charge in an Indictment must be
 direct and certain.

Church-wardens and Overseers of the Poor may consent to
 the binding and putting out to Sea-Service any poor Boy of
 ten Years of Age, who is, or whose Parents are chargeable
 to the Parish, or who shall beg for Alms, till he comes to
 twenty-one Years; his Age is to be mentioned in the Inden-
 ture, and 50 s. to be given with him. 2 Ann. c. 6. §. 1.

The Collectors of the Customs are to enter such Inden-
 tures in a Book kept for that Purpose, upon Forfeiture of
 5 l. to the Use of the Poor, from whence such Boy was
 bound, by the same Statute, §. 5.

And by the sixth Section one Justice may convey such Ap-
 prentices to the Port to which their Masters belong, in the
 same Manner as Vagrants are to be sent by 11 & 12 of
 W. 3.

1 Salk. 38c.
 Noy. 10c.
 Mod. Cases
 69, 122.
 Mod. Cases
 218.

Approver.

THIS is a Person, who being in Prison for the Fact for which he is indicted, and either arraigned upon it, or upon an Appeal, and there being a Coroner assigned by the Court, confesseth that very Fact before him, and then impeacheth other Persons as Co-adjutors with him in the same Crime.

And so much Credit is given to this Confession, that Process shall issue out against the Offender, and he shall be arraigned as if an Indictment by a Grand Jury had been found against him.

Armour.

IN 2 *Ed. 3.* the Statute of *Northampton* was made, That none should come with Force and Arms before the King's Justices, or his Ministers in executing of his Commands, nor go or ride arm'd in an Affray of the People, or by Night, or by Day before the King's Justices, or in any other Place.

The Punishment was Forfeiture of the Armour, and Imprisonment during the King's Pleasure. This Law was reviv'd *Anno 7 R. 2.* and afterwards *Anno 20 R. 2.* it was enacted, That it should be duly observ'd upon the Pains in the first Act mentioned; and as a farther Punishment, the Justices of Peace, who have Power to put the Statute of *Northampton* in Execution, might inflict a Fine upon the Offender.

3 Inst. 16.

My Lord *Coke* in his Exposition on the Statute saith, That the Commands of the King therein intended, are his Writs and Process of Law, which are to be executed by his Ministers; and therefore if any Person with Force resist them, the Sheriff is enabled *vim vi repellere* (to repel Force by Force) with the Force of the County.

F. N. B. 54.
249. F.

The Party griev'd may have a Writ upon this Statute, directed to the Sheriff, who finding the Force, may make Proclamation to depart; and if they refuse, he may seize their Armour, and commit them.

But this Writ is now disused, because the Party could not be restor'd to his Possession thereby, and a speedier Remedy is given by the Statute of 8 *H. 6. cap. 9.* which you may see in Title *Forcible Entry*.

My Lord *Coke* farther tells us, That this Act had so good an Effect upon the People, that it was not put in Execution for above twenty Years after it was made; and then a Quar-

rel happening between Sir *Thomas Pigott* and Sir *John Trevor*, the first carried Arms secretly under his Garment, as well before the Judges of the *King's Bench* as others, for which he was committed by the Chief Justice, and his Arms taken from him, and not enlarged 'till the King's Pleasure was known. 21 Jac. 1. c. 15.

And I think few Prosecutions have been made upon this Law since that Time; I remember but one, which was *Mich. 2 Jac. 2.* against Sir *John Knight* for walking about the Streets at *Bristol* with a Gun, and coming to Church so armed: It was tried at the Bar in *B. R.* and the Defendant acquitted.

Any Person may use Force and Arms in the Defence of his Person or House against Robbers, or against those who shall assemble to do him any Violence; or to suppress Riots; but the safest Way is to be armed in the Assistance of the King's Officers or Ministers of Justice. Who may arm themselves.

The Armour of Recusants convict shall be taken from them by Warrant from four Justices of Peace at Quarter-sessions; and yet they shall be charged to the Militia according to their Ability. Who shall be disarmed. 3 Jac. 1. c. 5.

If they conceal their Arms, or give any Disturbance in the Delivery, one Justice may commit them for three Months without Bail.

Any Justice may command Weapons to be taken from a Prisoner brought before him.

Arms, Munition and Gun-powder shall not be imported without the King's Licence, under Pain of Forfeiture of the Goods, and treble the Value, one Moiety to the King, the other to the Prosecutor, by Action of Debt, &c. 1 Jac. 2. c. 3.

Those who obtain Letters Patent for sole making Arms or Gun-powder, and put the same in Execution, are made guilty of a *Premunire*, and the Grants are void, any Clause *Non obstante* notwithstanding.

Army and Militia. See Soldiers.

Army Debentures.

It is Felony without the Benefit of Clergy, to alter or counterfeit any Army Debenture, or knowingly or fraudulently to make out and issue Army Debentures other than appointed by the Commissioners, by the Statute of 6 Geo. 1.

7. §. 7.

F

Arrest.

Arrest.

Who may be arrested.

ALL Persons under the Degree of a Baron may be arrested by a Warrant from a Justice of Peace, for any Misdemeanor, or any Thing done against the Peace. *Dalt. c. 170.*

A Peer may be arrested by a Writ out of B. R. for a Contempt or Breach of the Peace.

A Clergyman, but not in Divine Service.

A *Feme Covert* for a Riot.

An Infant, if he cannot find Sureties for the Peace, but not for the Breach of any Statute, unless he is therein charged.

The Manner of Arresting.
Commitment,
and by what Process.

'Tis no Arrest for a Constable having a Warrant to command the Party to appear before a Justice of Peace, but he must lay hold on his Person. *Dalt. c. 170.*

Where an Affray is made, and the Offenders fly into another County, the Constable may pursue them.

* But a private Person cannot break open a Door.

* He may break open a Door to take an Offender; but then some Felony must be committed. *H. P. C. 93.*

Sessions may award a *Capias* against a Person indicted, and by Virtue thereof the Officer may break open Doors.

Commitment by a Justice must be to the common Gaol, by *Mittimus* under his Hand and Seal, containing the Cause, and it ought to conclude, *viz.* There to remain till he be delivered by due Course of Law; otherwise 'tis void. *H. P. C. cap. 94.*

A sworn Officer needs not shew his Warrant.

By a private Person, and for what Cause.
3 Inst. 118.
D. l. c. 170.

In all Criminal Cases where any one is in Danger of Life or Member, any private Man may arrest another without Presentment, Process, or Warrant; so likewise where a Felony is committed, every Person present must endeavour to take the Offender, or may be fined and committed; and in such Case, any suspected Person, tho' upon common Fame only, may be taken; and if he make Resistance, you may justify the Beating of him.

Offenders, by { Dangerously wounding a Man in an Affray
Unlawfully hunting in Parks.
Keeping Guns, not qualified.
Night-walking.

All these may be arrested by any private Person; then they must be brought to the Constable; and if he is not to be found, then to the Justice, in order to the Commitment. *Dalt. c. 170.*

A Justice

A Justice of Peace may, at his Discretion, grant a Warrant to take such whom he shall suspect to be inclin'd to break the Peace. *Dalt. c. 170.*

So upon his own View he may commit those who offend against Penal Laws.

Herein any Person aiding him, may break open an House to apprehend a Felon, having a lawful Warrant; so likewise to apprehend one who hath dangerously wounded another; so where an Affray is in a House, and the Door shut, the Constable may break it open; so upon a forcible Entry and Detainer, either upon View of Justices, or upon an Inquisition taken before them; so may the Sheriff, upon an Outlawry in a Personal Action; so he may upon a Warrant for the Peace, or good Behaviour, and generally in all Cases where the King is Party. *Moor 606.*

Breaking open a Door by Officers of Justice, and in Aid of them. *H. P. C. 90.*

But he ought first to acquaint the Person of the Cause, and to desire the Doors may be opened.

If Complaint be made to a Constable of Felony done, or Blow given, though the wounded Person is not dead, if an Assault be made on himself, or where there is any Breach of the Peace done in his View, he may put the Offenders in the Stocks, or secure them in his own House, till he can bring them before a Justice. *H. P. C. cap. 92.*

By a Constable without any Process.

When brought before the Justice, if he hath Power by any Statute to bind him over, or to cause him to do any Thing, and he refuseth, he may commit him till he is conformable.

What is to be done when an Offender is arrested.

If he flee into another County, and is taken there, he shall be committed to Gaol, not where the Felony was done, but where taken.

Constable may put him in the Stocks for a reasonable Time till he can get Help to convey him to Gaol.

Gaoler may make his own House a Gaol; but a Justice must not send him thither, but to a common Gaol, and the Gaoler cannot make his own House a Gaol above a Day and a Night.

Cro. Eliz. 329.

At Common Law, the Gaoler could not put Irons upon a Prisoner; but by the Statute of *W. 2. c. 11.* 'tis enacted, That *carceri mancipetur in ferris* (he may be kept in Prison in Irons.)

By a late Statute, the Prisoner must not be carried to a Victualling-house without his Consent, so as to charge him with any Sum of Money for Meat or Drink, nor more taken for the Arrest than by Law requir'd; nor any Reward exacted for keeping him out of Gaol till he find Bail or agree; nor more taken for a Night's Lodging, or other Expences, than what shall be allow'd by the next Justice or Sessions.

22 & 23 Car. 2. c. 20.

This must be at his own Expences, (if able) otherwise at the Charge of the Town where taken, who may be distrained if they refuse.

In carrying him to Gaol. Vide Tit. Constable.

If the Prisoner refuse to be at the Charge, the Justice may direct a Warrant to the High Constable, or Petty Constable of the Town where he hath any Goods, to sell as much as will satisfy the Charges.

If the Gaoler will not receive him, the Constable must bring him to the Town where taken, who must keep him till next Assizes, and there the Gaoler shall be punish'd, *Dalt. c. 170.*

The Time of Imprisonment.

Where Imprisonment is directed by any Statute, and no Time limited when the Offender shall be committed, it must be presently; so where 'tis not limited, how long he shall continue in Custody, there 'tis in the Discretion of the Court.

Co. L. 260. says, Imprisonment ought to be *Custodia & non Pœna nam Carcer ad homines Custodiendos non ad puniendos dari debet*; besides it seems a great Absurdity that Imprisonment, *prima facie*, should be look'd upon as a Punishment, when perhaps the Party committed is in fact guilty of no Offence; tho' Suspicion may be a just Cause of Commitment in order that the Party may be amenable to Justice, yet the Commitment is solely *ad Custodiendum*; and it might perhaps not be unworthy the strict Inspection of the Legislature, that an innocent Person might not find his Imprisonment more than an adequate Punishment to his supposed Crime if he had really committed it.

The Manner.

He must be kept *in salva & arcta Custodia*, (in safe and close Custody,) and if the Gaoler suffer him to go abroad at any Time, tho' he return to the Prison, 'tis an Escape, and the Gaoler may be fined; for Imprisonment is a Punishment of the Offender, as well as the Keeping of him to answer his Fault.

A Warrant to arrest one suspected of Felony.

W Hereas a Felony hath been lately committed, &c. *wherein* A. B. of your Parish is suspected to be concerned: These are therefore in his Majesty's Name to command you forthwith to bring the said A. B. forthwith before me or some other Justice of Peace of this County, to answer to all such Matters as shall be objected against him by, &c. relating to the said Felony; and hereof fail not. Given, &c.

Artificers.

Manufacturers going abroad, or Persons enticing them so to do, how punishable.

IT being found by Experience, that the English excel most People in Manufactories; therefore they have been enticed by great Wages to leave the Land, and to teach several Trades to Foreigners, which being prejudicial to the Trade

of this Nation, a Law was made, by which it was enacted, That if any Man shall be convicted upon an Indictment or Information at the Assizes or Sessions, for contracting with, or enticing or endeavouring to persuade or sollicite any Artificer in Wool, Iron, Steel, Brass or other Metal, Clock-maker, Watch-maker, or any Artificer, to go out of the King's Dominions, he shall be fined for the first Offence, by the Court, in any Sum not exceeding One hundred Pounds, and shall be committed for three Months, and until the Fine be paid; and for the second Offence shall be fined at the Discretion of the Court where he was convicted, and shall be committed for twelve Months, and until he pay the Fine: The Prosecution must be within twelve Months next after the Offence committed.

Any such Artificer going into any Foreign Country there to exercise or teach his Trade to Foreigners, or being there, and shall not return within six Months after Warning given him by our Envoy or other Minister there, and continually afterwards inhabit here; in such Case he shall be incapable of taking any Legacy, or of being an Executor, or Administrator, and shall be incapable of taking any Lands by Devise or Descent, and shall forfeit all his Lands to the King, and be deemed as an Alien.

After 1 May 1720. Upon Complaint made on Oath before one Justice, that a Person is endeavouring to seduce any Manufacturer or Artificer out of the Realm, or that he hath already contracted or promised, or is preparing to go out of the Realm for the Purposes aforesaid, the Justice shall send his Warrant to bring the Person before him or some other Justice, &c. and if it shall appear to him upon the Oath of one Witness, or the Confession of the Party, that he is guilty of the said Offence, then the Justice shall bind him over to the next Sessions or Assizes, with reasonable Sureties for his Appearance; and if he neglect or refuse to give such Security, then the Justice may commit him to the County-Gaol, there to be kept till the next Assizes or Sessions, and until he shall be delivered by due Course of Law; And if such Artificer or Manufacturer shall be convicted at the next Assizes or Sessions, upon an Indictment of any such Promise or Contract made, or Preparation to go beyond Sea, for the Purposes aforesaid, he shall then give Security to the King, not to depart out of his Dominions for the Purposes aforesaid, as the Court shall think reasonable, and shall be committed till he give such Security.

A Warrant against one enticing an Artificer to go out of the Realm.

To the Constable, &c.

1 G. c. 27.

* Or that the Party himself hath promised or contracted to go out of the Realm.

Wilts, to **W** Hereas Complaint hath been made unto me, wit, upon the Oath of W. R. of, &c. that T. W. of, &c. did on the 12th Day of July last past, at B. in the County aforesaid, endeavour to * seduce M. M. of, &c. being an Artificer in Brass, to go out of the Realm into a Foreign Country to the Dominions of the Czar of Muscovy, there to exercise his Trade of a Clock-Maker, and to teach the same to Foreigners there: These are therefore to require you to apprehend the said T. W. and to bring him before me or some other Justice of the Peace for the County aforesaid, to answer the Premises, &c.

If it appear to the Justice upon the Oath of one Witness, or the Confession of the Party, that he is guilty of this Offence, then he must enter into a Recognizance with Sureties to appear at the next Sessions or Assises.

A Mittimus for not entring into a Recognizance to appear, &c.

To the Constable of, &c. and to the Keeper of the County-Gaol in the County of W.

Wilts, to **W** Hereas it appeareth to me upon the Oath of wit, W. R. of, &c. that T. W. of, &c. did on the 12th Day of July last past, at B. in the County aforesaid, endeavour to seduce into a Foreign Country in the Dominions of the Czar of Muscovy, there to exercise the Trade of a Clock-maker, and to teach the same to Foreigners, contrary to the Statute in that Case made and provided, and that the said T. W. hath neglected to give Security for his Appearance at the next Assises, to be held for the said County: These are therefore to require you to convey the said T. W. to the County-Gaol in W. aforesaid, and to deliver him to the Keeper thereof, who is hereby commanded to receive him into the said Gaol, and there safely to keep him till the next Assises as aforesaid, and until he shall be delivered by due Course of Law, &c.

And note the Stat. 5 Geo. against Artificers going into Foreign Parts, &c. Whereby a Justice of Peace, on Complaint to him that any Person is attempting to draw away any

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any such Artificer, or that any Artificer is contracting to leave the Kingdom, may send his Warrant, &c. and on Conviction by Oath or Confession bind him over with Sureties to the next Assizes or General Quarter-Sessions, where he is to give Security not to depart the Realm; and on not giving Security in either Case, to be imprisoned.

A Warrant on the said Statute.

WHereas Complaint hath this Day been made unto me W. B. Esq; one of his Majesty's Justices of Peace for the said County of, &c. That A. B. of your Parish hath contracted for, or is going out of his Majesty's Dominions, to exercise his Art or Trade of, &c. or to teach it to Foreigners; These are, &c. to command you to apprehend the said A. B. and bring him before me, or some other, &c. to answer to the said Complaint, and to be proceeded against according to Law, Given, &c.

Assault.

AN Assault is an Offer or Attempt with Force and Violence to do another a corporal Hurt; the Offering to strike with or without a Weapon, Presenting a Gun, &c. Clinching his Fist in an angry Manner, &c. But Words alone can't amount to an Assault.

Assault is derived from the old Latin Word *Affultus*, which signifies a *Leaping on another*; so that *ex vi termini* it cannot be performed without the Offering some Hurt to the Person, as by Striking, &c. And Battery is the wrongful Beating another.

Justifiable.

As Parents have over their Children till they come of Age, for till then they may chastise them for Offences, without Breach of the Peace.

As the Master hath over his Servant, the School-Master over his Scholars, a Gaoler over his Prisoners, and any Man over his Kinsman who is mad; or who, being at Liberty, attempteth to do any Mischief.

He may strike another to defend his Person from being wounded or beaten.

1. Where Men have a natural Power over others.

2. Where Men have a civil Power over others.

3. In Defence of the Person.

4. In Defence
of the Person
of another.

If a Soldier hurt another by Misfortune or Negligence, and not wilfully; so if two agree to play at any Game, and one is hurt, 'tis no Breach of the Peace, because 'twas by Consent.

I may justify the Beating of another, who would do Mischief to my Wife, Father, or Mother; for I am bound by Law to protect the one, and I owe Obedience to the other.

So may the Wife justify the Beating one who would beat or assault the Husband; so may the Father or Mother any Person who would beat their Children.

A Servant may likewise justify the Beating another, in Defence of his Master, (*& e converso*) but not of his Master's Father or Mother, &c. because they owe no Obedience to them.

So where the Life of any one is in Danger by beating, or otherwise, any Person may endeavour to resist, and that by beating him who offered the Violence. *Dalt. 206.*

5. In Defence
of my Goods.

As if any would by Force wrongfully take them away, whether I have a Property in them, or a bare Possession only, 'tis justifiable to resist; but the Offender must not be wounded; and, if killed, 'tis Felony.

So 'tis, if another endeavour to put me out of Possession of Land, or to turn a Highway, or to divert a Water-course, &c.

If a Person comes into my House, and will not go out, tho' I desire him, I may justify laying hold of him and turning him out.

An Indictment for an Assault.

Suffex, to **T**HE Jurors for our Sovereign Lord the King, wit, King upon their Oath present, That T. P. of the Parish of H. in the said County, Taylor, on the 30th Day of January in the 9th Year, &c. at the Parish aforesaid in the said County, with Force and Arms made an Assault in and upon I. O. then and there being in the Peace of God, and of our said Sovereign Lord the King, and then and there beat, wounded and evilly treated him the said J. O. so that his Life was endangered of, and he then and there did other Injuries to him, to the great Damage of him the said J. O. and against the Peace of our said Lord the now King, his Crown and Dignity.

1 Sid. 140.

It has been observed, That if the Words, *Vi & armis* (with Force and Arms), are not put immediately before the *insultum fecit* (made an Assault), that the Indictment is naught, though these Words are in the Beginning of it; but this seems to be a Nicety grounded upon no Manner of Reason.

I shall

I shall conclude this Title with a remarkable Case, which was thus: One *Macbell* courted the Sister of Mr. *Gott*, a Barrister of *Grey's Inn*, and a Justice of Peace for *Suffex*; and he not consenting to the Match, was sent for to an Ale-house by Mr. *Macbell* and one *Tully*; when he came thither, *Tully* went out of the Room to prevent any Person from assisting Mr. *Gott*; whom *Macbell* beat so much, that he broke his Arm: And for this Battery, he and *Tully* were indicted and found guilty; and *Macbell* was fined 1000 *l.* and *Tully* 500 *l.* and both committed for a Month without Bail, and to find Sureties for their good Behaviour for seven Years.

By an Act of 7 *Geo.* 2. If any Person after 1 *May* 1734. shall with any Offensive Weapon or Instrument maliciously assault, or shall by Menaces, or in or by any forcible or violent Manner demand Money, Goods or Chattels of or from any other Person, with a felonious Intent to rob or commit Robbery upon such Person, every Person so offending shall be liable to be transported for seven Years, and if he returns before the Time expires, he shall suffer Death as a Felon.

Assize of Billets, &c. See Fuel.

Assize of Bread, See Weights, &c.

Assizes, &c.

ALL Justices of Peace under the Degree of Barons are obliged to attend the Judges of Assize in their Circuits, under Pain of being fined for Non-appearance; and the first Day of the Assizes all the Justices of Peace for that County are called over, and the Defaulters marked and fined, if not excused.

And whether they appear in Person or not, they are obliged to transmit to the Assizes all Recognizances, Informations, Examinations, &c. which they have taken concerning any Prisoners to be tried, that so the Judges of Assize may proceed thereon; and if they neglect to send any of them, they are not present, or their Clerks, to examine and prove the same, they will be grievously fined.

Note; the Examinations must not be on Oath, but must be signed by the Prisoner, and the Justice: But the Informations must be on Oath, and signed by the Witnesses.

Attainder and Conviction.

1. What it is,
and how it dif-
fers from Con-
viction.

THESE Words are used promiscuously, and sometimes one is signified by the other; as by the Statute of 3 H. 7. c. 1. 'tis enacted, That if any Man be acquitted of Murder upon an Indictment, or *attainted*, an Appeal may be brought if the Benefit of Clergy is not had; here the Word *Attainted* must signify *convicted*, because after Attainder, 'tis too late to have the Benefit of Clergy.

5 H. 4. c. 6.

13 H. 4. c. 7.

But in Propriety of Speech, a Man is said to be *attainted* when after Conviction Judgment is passed by the Court; and he is said to be *convicted* when he confesseth the Fault, or is found guilty by a Jury, and before Judgment given.

21 H. 6. c. 11.

3 Jac. c. 4.

Yet a Man may be *attainted* upon an Outlawry, and convicted in many Cases by his own Confession, and without a Verdict, as generally upon Penal Laws, *viz.* a Recusant indicted at Sessions, and Proclamation made for him to surrender himself to the Sheriff, if he neglects to appear at the next Sessions, the Record of his Default is a Conviction; and so in many other Cases.

The Punishment of a Person attainted, *viz.*

2. The Punish-
ment of a Per-
son attainted.

Loss of Life.

Corruption of Blood.

Forfeiture of Fee-simple Estate from the Time of the Offence, so that the King shall have *Ann. Diem & vastum* (the Day, Year and Waste) therein, and then it goes to the Lord of the Fee by Escheat; but the Lord may compound with the King and have it presently.

Forfeiture of Goods from the Time of the Attainder only.

1 Salk. 85.

As to Corruption of Blood, this Case happen'd; *W. R.* having an Estate for three Lives was attainted on the Statute of 8 & 9 Will. for Treason in *counterfeiting the Coin*, by which Statute Corruption of Blood is saved; and for that Reason it was a Question whether the Lands were forfeited or not; the Grantee of the King brought a Bill in the Exchequer to redeem (the Lands being mortgaged), and had a Decree from which there was an Appeal to the House of Lords, where the Judges held that the Lands came to the King as an *immediate Forfeiture*, which was a distinct Penalty from Corruption of Blood, so that the Corruption may be saved, and the Forfeiture still remain.

1 Salk. 85.

Adjudged, that an Attainder of Felony makes a Forfeiture of the Estate to the Lord only by Way of Escheat *pro defectu Tenentis* (for Default of a Tenant), and the not Descending

the Consequence of Corruption of Blood. Sir *Salathiel Lovel's* Case.

Before At-
tainer. { He may sell his Goods for his Maintenance in Prison.
If he is attainted of Felony and pardon'd, tho' he cannot be indicted for any Felony committed before the Attainder, yet an Appeal of Robbery lies against him for a Robbery committed before, because the Party may have Restitution upon an Appeal.

3. What may be done by or against the Party before or after, &c.

'Tis true, he may be indicted for a Treason done before the Attainder of Felony, because 'tis not only an Offence of a higher Nature, but the King, upon the Conviction, will be intitled to the Forfeiture of the Lands; however, if such Land was first vested in the Lord by the Attainder in Felony, it shall not be devested by any Conviction for a Treason committed before such Attainder, so as to give the King a Title.

If the Husband makes a Feoffment in Fee, then commits Treason, is pardon'd and dies, his Widow shall not have Dower against the Feoffee, because she is barred by the Attainder, so long as it remains unreversed.

1 Leon. 5.

After At-
tainer. { A Grant of Goods or Lands shall bind all Persons but the King, and the Lord of the Fee.
His Body is his own till Execution, and if he is killed before that Time, his Wife may have an Appeal.
He may be taken in Execution at the Suit of any Subject for Debt, but may be executed, notwithstanding he may purchase Lands in Fee. 2.

At Common Law, if a Felon was found guilty before the Coroner, or that he did fly; the Sheriff or Coroner may seize his Goods before Trial for the Use of the King, which ought to be appraised and left in the Custody of the Neighbours where the Offender lived.

4. What is to be done with his Goods.

The Law was the same if he did not fly, but was indicted; but then after the Appraisement they ought not to be removed out of his House before Attainder, if the Offender could give Security, that they should not be imbezilled; if not, then they were to be delivered to the Neighbours, who ought to keep them during his Imprisonment, and he was to have reasonable Maintenance out of them till Conviction.

By the Statute of 1 R. 3. c. 3. The Common Law is in this Particular confirmed, and the Party imprisoned shall recover

cover double the Value of the Goods seized by any Officer, or taken out of his House before Conviction.

After Conviction, or *fugam fecit* (that he made Flight) being returned by the Coroner, all the Goods, the Corn growing, the Profits of the Fee-simple Estate for a Year and a Day, and the Issues of intailed Lands during Life, and all Debts due upon any Securities, are forfeited to the King; and the Party to whom the King shall give the same may bring an Action in his own Name to recover them.

5. Attainder by Outlawry.

If 'tis erroneous, the Party may appear at any Time, and reverse it by Writ of Error.

At Common Law, it was an Error in Fact for the Party outlawed to be beyond Sea at the Time of the Judgment pronounced upon the Exigent; for which the Outlawry might be reversed in all Cases.

5 & 6 Ed. 6. c. 11.

The Advantage of this Error is taken away in Treason, by the Statute of 6 Ed. 6. but not wholly, for there is a Provision, That if the Person shall yield himself to the Chief Justice within a Year and a Day after the Outlawry pronounced, he shall be admitted to traverse the Indictment.

Sir John Hawles tells us, that no Judgment was ever yet given upon Construction of this Statute before that of Sir Thomas Armstrong, in the Reign of Jac. 2. because a Trial was never before that Time denied to a Person outlawed, if he came within the Time limited.

'Tis true, Sir Thomas Armstrong did not yield himself, but was taken in Holland, but still within the Year; so that it seemed a great Hardship to deny him a Trial upon the Nicety of a Word.

An Indictment for seizing the Goods of a Felon before Conviction.

Suffex, to wit, **T**HE Jurors for our Sovereign Lord the King upon their Oath present, That whereas one J. O. late of H. in the said County, Labourer, was taken upon Suspicion of Felony by him committed, to wit, for that, that the said J. O. did feloniously take and drive away a certain Horse, of the Goods and Chattels of one F. H. at H. aforesaid in the said County, and that afterwards the said J. O. was carried before G. C. Esq; one of the Justices of our Sovereign Lord the King, assigned to keep the Peace, &c. and was by him committed to the Gaol of our said Sovereign Lord the King within the County aforesaid upon Suspicion of the Felony aforesaid, whereupon one B. K. the Constable of the Parish of H. aforesaid did then and there take, &c. of the Goods and Chattels of the said J. O. so committed, before he was convicted of the Felony aforesaid, contrary to the Form of the Statute in such Case made and

and provided, and also against the Peace of our said Sovereign
and the now King, his Crown and Dignity.

Attaint. See Jury.

Attornies and Solicitors.

THE Forfeitures and Penalties of the Statute made in
the second Year of King George the Second is 50 l.
any who after 1 December 1730. shall sue or defend in
any Cause not being admitted and enrolled; which may be
sued for and recovered, not only in *Westminster-Hall*, but
also at the Assizes or General Quarter-Sessions, where the
Offence was, by any who sues within twelve Months, with
reasonable Costs of Suit; and no Effoin, Protection, or Wager
of Law, and but one Imparance; and not to be removed
before Judgment, or stay'd by any *Certiorari*, *Habeas Cor-*
pus, or other Writ. Stat. 2 Geo. 2. c. 23. §. 24, 25.

Badgers.

THESE are licensed.

5 Eliz. c. 12.

Transporters, Buyers, Carriers, Laders, Ladders,	} either of	Butter, Cheese, Corn, or Grain.	1. Their Qualifications. 2. Forfeitures. 3. Licenses.
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Must be a married Man and Householder, of thirty Years of Age, licensed in Sessions of the County where he hath lived three Years, under the Hands and Seals of three Justices, *Quorum unus, &c.* How qualified, Drover like Qualification.

This is to be in Force for one Year, and no more, and must be enter'd by the Clerk of the Peace, &c. who for writing it hath 12 d. and for Entry 12 d.

He must give Recognizance in Sessions, that he will not neglect; for Writing whereof he is to pay 8 d. and for Entry 4 d.

He who hath no License, forfeits 5 l. to be divided between King and Prosecutor. 2. Forfeiture.

'Tis

* Which see
in Title.

'Tis to be recorded in Sessions by Inquisition, Verdict, or Oath of two Witnesses; the Process is an Estreat for the King's Moiety, and a * *Capias* for the Moiety of the Prosecutor, which must be in the Name of the King, and the *Teste* by two Justices; and there must be three Weeks between the *Teste* and the Return thereof.

A License for a Badger of Corn.

3. Licenses.
Three Justices
in Sessions.

* Cannot buy
Corn out of
Market to sell
again without
express Words
in the License,
under Pain of
5 l. ut prius.

Suffex, to **A**T the General Quarter-Sessions of the Peace, be-
wit, at L. for the East Part of the County afore-
said, this present 9th Day of July in the 5th Year of the
Reign, &c. R. H. is licensed and appointed by the Justices in
their said Sessions, to be a Common Badger, Lader, Kidder,
Carrier or Buyer of Corn or Grain in any * Market or Fair
whatsoever, and the same to convert into Meal, and to carry
it to the City of London, or the Suburbs thereof, or to any other
Fair or Market, so that he use the same according to the true
Meaning of the Statute in the same Case made and provided
against Forestallers, Regrators and Ingrossers, and not otherwise.
This License is to continue for one Year next ensuing. In Wit-
ness, &c.

A License for a former Higler.

Three Justices.

Suffex, to **A**S in the former License, &c. to be a Common
wit, Higler, Lader, Kidder, Carrier, Buyer and
Seller of Hens, Chickens, Capons, Eggs, and any other dross
Viſuals, (except such which are prohibited by any Law) in any
Market or Fair whatsoever, and to use the said Office and
Dealing aforesaid, according to the Statutes in that Case made
and provided; this License to continue only for a Year next en-
suing, and no longer. In Witness whereof, three of the Justices
of the Peace for the County aforesaid, then present in the Sessions
aforesaid, have set their Hands and Seals to this present License
in Witness, &c.

The Recognizance and Condition, &c. taken in the Sessions.

THAT he shall not, by Colour of his License, forestall or
ingross or practise, or do any Thing contrary to the true
Meaning of the Statutes made against Forestallers and Regra-
tors, or any Thing therein contained.

A War

A Warrant to levy the Penalty for buying and selling Corn without a License.

Effex, to **W** Hereas A. B. of, &c. hath this Day made 5 El. c. 12. wit, Oath before us, That C. D. of, &c. hath bought Corn, &c. in the Market of, &c. and sold the same again in the Market of, &c. within five Miles of the former Market where he bought it, without being licensed thereto by the Justices of Peace in their Quarter-Sessions, and contrary to the Acts of Parliament made against Regrators, &c. whereby the said C. D. hath forfeited the Sum of 5 l. These are, &c. to command you to levy the said 5 l. so forfeited on the Goods and Chattels of the said C. D. by Distress and Sale thereof, and rendering the Overplus to the said C. D. pay the said Sum as the Act in that Behalf made directs. Given, &c.

Bail.

BAIL or Mainprife is the Delivery of a Man out of Prison upon the Undertaking of one or more Persons for him, that he shall appear at a Day limited to answer what is laid to his Charge.

And this is either in Cases Criminal, or Civil; in Cases Criminal, where the Party does any Act, which is either an ill Action in itself, *malum in se*, or an Action which, tho' indifferent in itself, yet for some political Reason is prohibited, which is called *malum prohibitum*; there in some Cases the Law requires the Body of the Party accused to be in Custody, as a Pledge, that he may not, if found guilty, fly from national Justice; in others of a less heinous Nature, the Legislature has contented itself by coming upon the Sureties, who are bound in a pecuniary Lien, if the Malefactor should secret himself.

At Common Law, Bail was allowed for any Offences except Murder; but by the Statute *W. 1. c. 15.* 'tis directed where it shall be taken, and where not, which seems to be a Rule to this Day, because the Statute 1 & 2 P. & M. c. 13. which gives Justices of Peace Power to bail, hath Relation to this very Statute. 2 *Inst.* 190.

My Lord Coke tells us, That in those Days Men were bailed by the Writ *De homine replegiando* (of bailing, or replevying Men), and by the Writ *De Odio & Atia* (of Malice or Ill-Will), both which are now disused.

These Writs were directed to the Sheriff, under whose Custody the Person was detained; and he was usually replevied,

1. In what Cases allowed.

plevied, that is, Pledges were taken for him in the County-Court in all Cases, except for the Death of a Man, and except a Person committed by the personal Command of the King, though the Commitment should be unlawful; a Person committed by the Judge for any Cause proper to his Judicature, or for the Forest; in these Cases the Sheriff was not to intermeddle in his Court, but the proper Remedy was by a *Habeas Corpus*, and Justice was done to the Party in the great Courts at *Westminster*.

The Reason of Bail.

Now the Reason why Bail was taken in all other Cases, was, because *Stabat indifferenter* (it stood indifferently) upon a bare Accusation, whether the Party was guilty or not; and therefore by that Statute a Person outlawed was not to be bailed, because he is attainted in Law; but if upon the *Capias Utlegatum* he pleads a *Misnomer*, or alledges any Error in the Proceedings, he may be bailed.

When not allowed.

A Person abjuring is attainted by his own Confession; Approvers confess the Felony to be actually done by themselves; a Person taken with the Thing stolen: In all these Cases *non stat indifferenter* (it doth not stand indifferently), nor for breaking a Prison; for it may be presumed that an innocent Person will not do it. Notorious Felons; he that is accused by an Approver; one who sets an House on Fire; Counterfeiting Money; both which were Offences at Common Law, and so was Counterfeiting the Great Seal; a Person excommunicate; for antiently Men were excommunicated only for Heresies, and not for petty Offences; and if the Bishop certified the Excommunication into the *Chancery*, and the Party was taken upon the *Capias*, he was not to be bailed, unless he gave Caution *Parere Mandatis Ecclesie* (to obey the Commands of the Church): One guilty of an open and manifest Offence, and for Treason. All these were exempted from Bail by this Statute, but might be bailed in *B. R.*

Bail refused, where the Person is bailable by Law, is a Misdemeanor, and fineable. *H. P. C. 97. Style 182.*

When allowed in criminal Cases.

3 H. 7. c. 3.
1 & 2 Phil.
& Mar. c. 13.

'Tis allowed in Felony.

To Accessaries thereunto, before and after the Offence, until the Principal is convicted. *Dalt. 381.*

Aiding Felons, suspected to be done, and not if it be actually done; but it must be by two Justices, *Quorum unus*, and they must be both present when they bail him, and they must take the Examination in Writing; which together with the Recognizance enter'd into by the Witnesses to prosecute, must be certified at next Assizes: Attainted thereof by Outlawry, if he bring a Writ of Error, *B. R.* may bail him.

H. P. C. 101.

Persons

In Larciny. } Persons Indicted thereof before the Sheriff, or
 under the Value of 12 d.
 This is bailable, by the Stat. 1 E 2 P. &
 M. c. 13. by two Justices, *Quorum unus*,
 who must be present when they take the
 Bail, and it must be after Examination;
 but Manslaughter is not bailable if the Fact
 is confessed, or 'tis certainly known that
 he killed the Person, for it must stand *in-*
different if Bail is allowed; and there-
 fore if it be found Manslaughter upon the
 Coroner's Inquest, tho' no Indictment is
 preferred, King's Bench would not bail,
 for the Statute saith, That Bail shall be
 allow'd in Manslaughter where the Party
 is bailable by Law; which implies that
 'tis not to be allowed in all Cases. 1 Rol.
 Rep. 268. *Poyne's Case*.

In Man-
 slaughter. }

But of late some Doubts have been made, Whether a Man
 can be lawfully bailed for Manslaughter; tho' my Lord *Hale*
 tells us, if it be a *Non liquet* (doth not appear) whether the
 Party accused did the Fact, two Justices may bail him. 1 Rol. Rep.
 268. *Poyne's Case*.

Likewise if a dangerous Blow is given, the Person may
 be bailed 'till the other is dead.

An Indictment was found against a Feme Covert at a
 Quarter-Sessions in *Norwich* for *Petit Treason* and Murder of
 her Husband, she was brought to the Bar and moved to be
 bailed, and it appearing upon *Affidavits* that the Prosecution
 was malicious, nothing being done either upon the Indict-
 ment or Coroner's Inquest, she was bailed. 5 Mod. 323.
M^s. Barney's Case.

Colonel *Dorrington* was committed to the Tower for High
 Treason, and one *Fitz-Patrick* assisted him to escape, for
 which he was committed by the Privy Council; and being
 brought up by *Habeas Corpus* was bailed, because there was
 a Sessions between this Time and the Time of his Commit-
 ment, and no Prosecution. 1 Salk. 103.
Fitzpatrick's Case.

Where a Man is committed for *Forging Endorsements* on
 Bank-Bills, which is not Felony (tho' the Forging the Bill
 itself is), therefore he may be bailed, it being only a Misde-
 meanor. 1 Salk. 104.
Marriot's Case.

The Defendant was found guilty of Murder on the Coro-
 ner's Inquest, yet *B. R.* may bail him, because the Coroner
 proceeds on Depositions taken in Writing, which the Court
 may inspect. 1 Salk. 104.
Ld. Mohun's Case.

2. Bail taken
away by Sta-
tutes.

- In Sessions
Process. { Commitment thereon upon an Indictment a-
gainst any Penal Statute, by which Bail is
not prohibited, may be bailed by two Ju-
stices, *Quorum unus*.
- In Sessions
Process. { Against the Party to appear upon an Indict-
ment for a Trespass, one Justice may bail.
Dalt. chap. Bailment and Mainprise.
- In Trespas-
ses. { Where Life or Limb is not in Danger, after
an Indictment and Process thereon, the
Party may be bailed by two Justices, *Quo-
rum unus. H. P. C. 100.*
- Accessaries. — In Treason, *per Stat. West. 1. c. 15.*
- Abjuring. { The Realm, because they are guilty by their
own Confession.
- Accompt-
ants. { Found in Arrears before Auditors, 'till Satis-
faction made.
- Ale-house-
keepers. { Without License, the second Offence being
Commitment to the House of Correction
for a Month; suffering Tippling contrary
to 1 *Jac. 1. c. 9.*
- Appeals. — Of Death not bailable. *H. P. C. 103.*
- Approvers { These are Men who have committed Felony,
and confess it; but this doth not concern
Justices of Peace, any otherwise than to
take his Confession and commit him, and
send his Warrant for those accused. *W. 1.
c. 15.*
- Armour. { Persons riding armed, contrary to the Statute
of *Northampton*, committed by Justices,
are not bailable; Concealed by a Recu-
sant convict, or disturbing the Delivery of
it, one Justice may commit for three
Months without Bail.
- Arrest. { Procured in the Name of another; convicted
thereof, is to be imprisoned six Months.
- Bastards. { Father or Mother not performing Justices Or-
der; Mother to House of Correction for
first Offence for a Year. *Vide Bastards.*
- Breakers. — Of Prisons. *W. 1. c. 15.*
- Bridges. { Surveyors and Collectors of Money for repair-
ing them, refusing to account. *22 H. 8.
c. 5.*
- Burning. — Houses. *W. 1. c. 15.*

- Church. { See Recusants.
Refusing to be Overseers thereof.
- Cloth. { Convicted for making deceitful Cloth, if the
Party hath not wherewith to be distrained.
Dalt. ch. Bailment and Mainprize.
- Coining. — False Money. *W. 1. c. 15.*
- Commission. { Of Rebellion out of *Chancery*; Persons ta-
ken thereon. *Dalt. ch. Bail.*
- Conies. { Killing them in inclosed Grounds, three
Months Imprisonment. 3 *Jac. c. 13. 22,*
23 *Car. 2. c. 25. Vide Game.*
- Constables. { Neglecting to levy Forfeitures for Abuses in
Ale-houses, and not having any Thing of
their own, upon which to distrain 40*s.* for
their Neglect. 1 *Jac. 1. c. 9. s. 4.*
Neglecting to whip Trespassers in *Orchards*
and *Woods*, by the Command of the Ju-
stices.
- Counterfeit-
ing. { Great Seal, &c. *W. 1. c. 15.*
- Deer. { Killing and Hunting, contrary to Stat. 5 *E-*
liz. c. 21. committed for three Months.
Pulling down Pales in the Night, where red
or fallow Deer are inclosed, three Months
Imprisonment. 3 & 4 *W. & M. c. 10.*
- Dogs. — See Hunting.
- Dyers. Convicted for using Logwood.
- Engrossers. { Forfeit 20*s.* for each Offence, or to be com-
mitted for two Months.
- Excommuni-
cate Persons. { Taken by the *Capias.* *West. 1. c. 15.*
- Felons. { Notorious, *viz.* Those who are taken with
stolen Goods. *W. 1. c. 15.*
Those who are taken freshly by Hue and
Cry. *H. P. C. 101.*
- Felony. { Actually done, tho' it doth not appear that
the Accus'd is guilty. *H. P. C. 98.* At-
tainted or convicted thereof by Confession
or Indictment acquitted within a Year. Not
to be bail'd but at Discretion. That an
Appeal may be had against him. 3 *H. 7.*
c. 1. H. P. C. 103. W. 1. c. 15.

Pheasants.

— See Partridges.

Fish.

{ Destroyers of Ponds, three Months Imprisonment, and good Behaviour for seven Years.

Forgers.

{ Of Deeds, Wills, or Writing sealed, or Court-Rolls, and those who assent to it; those who publish it knowingly, *viz.* Imprisonment after Conviction for Life, where any Man's Estate of Inheritance might have been defeated.

Forestallers.

{ Forfeit 20*s.* for each Offence, or to be committed for two Months.

Fowl.

{ Shooting at, or destroying Duck, Pheasant, Hern, Mallard, Partridge, Pigeon or Teal, by Persons unqualified, *viz.* not having Estate of Inheritance, or for Life, in their own or Wife's Right, of 100 *l.* per Ann. or Lease of 99 Years of 150 *l.* per Ann. 22 & 23 Car. 2. c. 25. Commitment for three Months, unless pay 20 *s.* for every Fowl to the Use of the Poor.

Fraudulent Conveyances.

The Parties.

{ Those who put them in Suit. Commitment for Half a Year after Conviction.
Those who assign'd Lands or Goods so to them convey'd knowing thereof.

Gaming.

Those who keep such Houses.

{ Those who play at unlawful Games; Commitment till they find Sureties not to offend again.

Guns.

— See *antea* Fowl.

Hares.

1. Those who shoot, kill or destroy them. Tracing them, or coursing them in the Snow.

Taking them in any Engine; Commitment for three Months, unless he pay 20 *s.* for every Hare, to the Use of the Poor.

2. Keeping Grey-hounds, or Dogs for Coursing Hares, unless he have 100 *l.* a Lease for Life of 30 *l.* per Ann. or be worth 200 *l.* in Goods: Commitment for three Months, unless he pay 40 *s.* to the Church-wardens, for the Use of the Poor. 1 Jac. c. 27.

Hatters. { Taking above two Apprentices, or one for less than seven Years; Commitment for one Month. 8 *Eliz. cap.* 11.

Hawks. { Taking them or their Eggs out of the Grounds of another; three Months Imprisonment upon Conviction, and then to find Sureties for Good Behaviour for seven Years, or to remain in Prison till they find such Sureties.

Hawking. { Between 1 *July* and 31 *August*; Commitment for One Month; unless he pay 40 *s.* for every Hawking, and 20 *s.* for every Feasant or Partridge kill'd. 7 *Jac. c.* 11.

Highways. { Not paying the Forfeitures collected for Repairing or Amending them; Commitment till paid.

Hunting. { Clergy-man not having 10 *l. per Ann.* Keeping Dogs to hunt, convicted
Layman, not having 40 *s. per Ann.* at Sessions; committed for a Year.

Those who keep Greyhounds, not having sufficient Living, being convicted before two Justices; Commitment for three Months, unless he pay 40 *s.* 1 *Jac. c.* 27.

And killing Deer and Conies in inclosed Grounds; Commitment for three Months.

Inn-keepers. { Who shall not sell Hay, Oats, Beans, Provender, or other Victuals for Man or Beast, for reasonable Gain; convicted the second Time; Commitment for one Month. 21 *Jac. c.* 21.

Labourers. { Going from Work before finish'd; Commitment for a Month. 5 *Eliz. c.* 4.

Masters. { Giving more Wages than assess'd by the Justices; Commitment for ten Days. 5 *Eliz. c.* 4.

In Man-slaughter. { After the Confession of the Offender. 2 *Inst.* 187. *Se defendendo*, not bailable by Justices of Peace, but *B. R.* may bail him. *H. P. C.* 99, 161.

In Murder,
tis *Corpus*
pro Corpore,
(Body for
Body.)

Not bailable at Common Law; yet it hath been allow'd by *B. R.* and adjudged, That the Statute of *W. 1. c. 15.* should receive a favourable Construction, according to the Discretion of the Judges, and as the Circumstances of the Case require.

Latch 12.

And therefore one *Andrews* being outlaw'd for Murder, did 14 Years afterwards bring a Writ of Error, and was bailed; for *stat indifferenter* whether pending the Writ of Error the Outlawry was good or not. *Style 94.*

So two were committed upon Suspicion of Murder, and when those who actually had done it confess'd at their Execution, the other who were imprisoned were bailed. *Style 96.*

Acquitted thereof upon an Indictment, not to be bailed till after a Year and a Day, that the Party may bring his Appeal. *3 H. 7. c. 1.*

1 Salk. 104.

The Defendant was indicted for *Murder*; the Court would not bail him upon *Affidavits* of the Evidence, because that might discharge the Prosecution.

Ld. Mohun's
Case Ibidem.

So where a Man was found guilty of *Murder* by the Grand Jury, the Court will not bail him, because they cannot have Notice what Evidence was before the Jury, which by their Oath they are bound to conceal.

King and Kear,
1 Salk. 102.

The Defendant was indicted for *Murder* and on the Statute of *Stabbing*, and the Jury found him guilty of *Man-slaughter*, and a Special Verdict as to the Rest; he mov'd to be bailed, but it was deny'd; for 'tis never granted where a Man is found guilty of *Man-slaughter*, 'till Clergy had: 'Tis true it was allowed in *Liste's Case*, but he pray'd his Clergy, which is as much as he could do.

It has been deny'd where the Defendant was found guilty of *Man-slaughter* on the Coroner's Inquest, for the Statute of *W. 1. c. 15.* is, That no Bail shall be taken; but that must be intended, No Ordinary Bail; for the Statute *1 & 2 Ph. & M. c. 13.* is, That Bail shall be taken where the Party is bailable by Law in *Man-slaughter*, by which it appears that he is not bailable in all Cases of *Man-slaughter*; as for Instance, if he confess the Fact, or if it is notorious.

Master.

Those who absent, or who do not bring the best Furniture; Commitment for ten Days.

Those

Oath. } Those who refuse to take the Oath of Allegiance, being tender'd, Commitment till the next Assizes or Sessions, being above the Age of eighteen Years.

Partridge. — See Fowl.

Pigeon. — See Fowl.

Perjury. } In any Court of Record, or Court-Baron ; Commitment for six Months.

Physicians. } Committed by President and College in *London*, must continue there, till discharged by President and College.

Refusing to pay Rates for them, and no Distress to be taken ; Commitment till paid, and Charges.

Overseers refusing to make their Account, or to pay over to new Overseers what remains in their Hands ; Commitment till performed.

Poor.
Things relating to them.

Negligent in their Office, forfeit 20 s. and having no Distress to be taken, Commitment till Forfeiture paid.

Parents refusing to relieve Children, as the Justice shall assess in Sessions, Forfeiture 20 s. per Month ; and having no Distress to be taken, Commitment till paid. 42 *Eliz. c. 2.*

Common, &c. Minister, if beneficed, depraving it ; Commitment for six Months. 2 & 3 Ed. 6 c. 1.

Second Offence ; Commitment for a Year.

Third Offence ; Commitment for Life.

If not beneficed, first Offence, Commitment for six Months ; but by 1 *Eliz. c. 2.* 'tis for twelve Months.

Second Offence for Life.

Prayer.

Any other Person forfeits 100 Marks to the King ; and if not paid within six Weeks after Conviction, Commitment for a Year.

Second Offence, 400 Marks ; and if not paid *ut supra*, Commitment for a Year.

Third Offence ; Imprisonment during Life.

Being present at any other Form ; first Offence, Commitment for six Months ; second Offence, twelve Months ; third Offence, for Life.

Preachers.

Disturbers of them in the Time of their Sermon, and such who aid or procure such Disturbance; they who rescue the Offender may be committed by one Justice upon a bare Accusation; six Days afterwards, two Justices having examined the Fact, may commit him for three Months, &c.
1 Mar. c. 3.

Suspected to be a Jesuit, or Seminary Priest, and being examined, refusing to answer; Commitment till he answer directly.

Suspected of Recusancy, and refusing to answer a Justice upon Oath, whether so or not, may commit till next Sessions or Assizes.

A Woman Recusant Convict, and not conforming, being committed, must remain there till she conform.

Woman or Child, under twenty-one, going beyond Sea, without License, the Master of the Ship must be committed for a Year.

Refusing to discover their Armour, or they, or any other disturbing the Delivery of it to Persons who have Authority to seize; Commitment for three Months. 3 Jac. c. 5.

Recusants.

1. Impugning the King's Authority in Ecclesiastical Causes. 2. Perswading others to it, or from coming to Church. 3. Meeting at Conventicles, under Colour of Religion. 4. Or perswading others to meet there. Commitment till they conform and make an open Submission and Declaration of their Conformity.

Absenting from Church on Sunday, and no Distress to be had; Commitment 'till Forfeiture is paid.

Above the Age of sixteen, and absenting for a Month; Forfeiture 10 s. per Month, or be committed till paid. 23 Eliz. c. 1.

Being a Recusant, or not allowed by the Ordinary; and being convicted, Commitment for a Year.

Keeping him, or any other Servant in the House, and not coming to Church for a Month, the Master of such House forfeits 10 l. per Month.

Rogues. { Incorrigible, being committed, must continue in Custody till next Sessions.

School-Masters. { Teaching Youth without License ; (*ut prius*) for the first Offence, Commitment for three Months ; and for the second Offence, like Commitment, and forfeits 5 *l.* per 13 *Ed* 14 *Car.* 2. c. 4.

Seal. — Great, counterfeiting thereof. *W.* 1. c. 15.

{ Departing before their Time is ended, unless for a Cause to be allowed by a Justice of Peace, or at the End of the Term, without a Quarter's Warning before two Witnesses, may be committed till he give Security to serve.

Servants, *Vid.* Servants and Apprentices. { Refusing to serve for the Wages appointed by Justices, or having promised to serve, and refuse ; Commitment until he shall be bound to serve.

{ Taking more Wages than set by the Justices ; Commitment for twenty-one Days.

{ Women above twelve, and under forty, and unmarried, refusing to serve, may be committed till they will be bound to serve. 5 *Elix.* c. 4.

Sheriffs. { Not electing Knights of the Shire in their full County between the Hours of eight and eleven in the Morning, or returning them contrary to the Statute ; Commitment for a Year.

{ Making any Warrant for an Arrest, without the original Process or Writ ; committed till he pay 10 *l.* to the Party grieved, and his Costs and Damages, and 20 *l.* to the King.

Suit. { In another Man's Name, there being no such Person, or without the Consent of the Person convicted by two Witnesses ; Commitment for two Months, paying treble Costs and Damages to the Party grieved. 8 *Elix.* c. 2.

Transportation.

Of selling Horse or Mare without License, forfeits them, and 40 *l.* for each, &c. between King and Prosecutor; and Commitment for a Year. 1 *Ed. 6. c. 5.*

Of Sheep alive; he that brings, delivers, sends, receives or takes them, forfeits all his Goods, and must have his Hand cut off in some open Market, and be committed for a Year; the second Offence is Felony. 8 *Eliz. c. 3.*

And others who shall take upon them to hurt another, though 'tis not done:

Or to provoke Love:

Or shall hurt any Cattle:

Commitment for a Year after Conviction. 1

Witches.

Jac. 22. repealed by 9 *Geo. 2. c. 5.* which takes away all Prosecution for Witchcraft, Inchantment, Sorcery, &c. either by Statute or Common Law, and punishes Persons pretending to exercise Witchcraft, tell Fortunes, or by crafty Science to discover stolen Goods, by a Year's Imprisonment without Bail, Pillory once a Quarter, and if required, Security for their good Behaviour.

Women.

Taking them unmarried, and under sixteen, out of the Possession of their Father or Mother, and against their Wills; or out of the Custody of the Person to whom the Father hath devised it, except such Taking shall be in the Behalf of the Master or Mistress of such Child, or Guardian in So- cage; two Years Imprisonment.

If deflower such Child, or contract Marriage without the Consent of the Father; and if he is dead, then of the Mother; convicted thereof, Commitment for five Years, or pay such Fine as *B. R.* shall assess, to be divided between King and Prosecutor.

4 & 5 *P. & M. c. 8.*

By whom, and
in what Sum.
Two Justices.

At Common Law, the Sheriff or Constable might have bailed one suspected of Felony; but now that Power is given to Justices of Peace by particular Statutes, *viz.* by 1 *R. 2. c. 3.* 3 *H. 7. c. 3.* 1 & 2 *P. & M. c. 13.*

The Sureties and Sum are left to the Discretion of the Justices, where no Sum certain is appointed by Law: But if the Crime be Suspicion of Felony, they must take very sufficient

icient Persons for the Appearance of the Party, and bind them in a good Sum.

And if the Justice at any Time before Appearance, shall think the Securities taken not sufficient, they may compel the Party to give better, or commit him.

The Sureties likewise may bring the Offender before the Justices of Peace, and desire to be discharged upon his Commitment, if they are of Opinion that he will run away.

The Justices may examine the Witnesses upon Oath.

Justices may bail any Prisoner committed for an Offence, of which they are competent Judges, but not others, and therefore they cannot bail Persons arrested by Writs out of the Courts at *Westminster* in any personal Action; for they cannot hear and determine such Actions.

And if they bail any Person who is not bailable by Law, Poph. 96. they ought to be fined. See Stat. *W. 1. c. 15.*

Two Justices (one being of the *Quorum*) may bail for Manslaughter or Felony, or Suspicion thereof (being bailable by Law), but they must be both present, and must take the Examination of the accused, and the Information of the Accusers and their Witnesses; and for Offences under Felony, one Justice may bail, and the Sureties and Sums are left to the Justice's Discretion, where no Sum is appointed by Law. 1 & 2 P. & M. c. 13. l. 6.

A Common Recognizance for Bail.

Suffex, to **B**E it Remember'd, That on the 1st Day of July 17 Ed. 1. c. 15. 27 Ed. 1. c. 3. 1 Ric. 3. c. 3. 3 H. 7. c. 3. 1 & 2 P. & M. c. 13. 1 Inst. 184. 31 Car. 2. c. 2. 1 Rol. 268. wit, in the 9th Year, &c. A. B. of, &c. C. D. of, &c. and E. F. of, &c. came before us G. H. and J. K. Esqs; two of the Justices of our said Lord the King assigned to keep the Peace in his County aforesaid, and acknowledged to owe to our said Lord the King in Manner and Form following; to wit, the aforesaid A. B. in 20 l. of lawful Money of Great Britain, and the said C. D. and E. F. each in 20 l. of like Money, to be respectively levied of their several Goods and Chattels, Lands and Tenements, to the Use and behoof of our said Lord the King, his Heirs and Successors, if Default be made of the within written Condition.

Note; If this Recognizance is taken before one Justice, then instead of *two*, say *one*; and where you mention the Year of the King's Reign, the Year of our Lord may be omitted.

A Recog-

A Recognizance where Bail is taken for a Felon.

Suffex, to **B**E it Remember'd, That on, &c. came before us, wit, &c. and also, &c. at L. in the said County the aforesaid A. B. and C. D. and took to Bail, until the next Gaol-Delivery to be held in the said County, one J. O. Labourer, taken and detained on Suspicion of Felony by him committed, as it is said, and took upon themselves, to wit, the said A. B. and C. D. severally under the Penalty of 100 l. of good and lawful Money of this Realm, and the aforesaid J. O. took upon himself under the Penalty of 200 l. of like Money, to be levied, &c. if the said J. O. shall not personally appear at the next Gaol-Delivery before the Justices of our said Lord the King assigned to deliver the next Gaol, to stand Right of the Felony aforesaid, and then and there to answer to our said Lord the King all Things which shall be objected to him. Dated, &c.

A Condition for Felony, or Suspicion of Felony.

* If charged but with Suspicion of Felony, then say, The Suspicion of his felonious, &c. whereof he stands charged.

THE Condition of this Recognizance is such, That if the within bounden A. B. do personally appear before his Majesty's Justices assigned to keep the Peace in the within named County of S. at the next General Sessions of the Peace to be holden for the said County at M. in the County aforesaid, (or before his Majesty's Justices of Gaol-Delivery, at the next General Gaol-Delivery to be holden for the within named County of S.) then and there to answer our said Sovereign Lord the King, for and concerning the * *Felonious Taking and Stealing of*, &c. wherewith he stands charged before (naming the Justices that committed him, &c.) and to do and receive, &c. and not to depart the Court without License for the same; then this Recognizance to be void, &c.

And Note; To acknowledge a Recognizance or Bail in the Name of a Person not consenting thereto, is Felony. 21 Jac. c. 26. Cro. Eliz. 531. 4 & 5 W. & M. c. 4.

Bailiff. See Extortion.

Bail.

Baker.

IF any Baker or other Person making Bread for Sale after September 1. 1715. shall make or expose to Sale any Bread, wanting one Ounce or more of due Weight, according to the Assize set pursuant to the Act) upon Conviction, shall forfeit 5 s. for every Ounce, and 2 s. 6 d. for less than an Ounce. See 1 Geo. 1. c. 25.

Complaint within the Bills of Mortality to be in thirty-four Hours after baked or sold, and elsewhere in three Days.

There is a Bill now depending for ascertaining the Price and Assize of Bread (within the Bills of Mortality) from the Price of such Flour only, whereof each Sort of Bread is made, making a reasonable Allowance to the Bakers for every Bushel of Flour, proportionable to the antient and customary Allowance for every Bushel of Wheat.

Vide 3 Geo. 2. c. 29. §. 2. Penalty for selling contrary to the Price set by the Lord Mayor, &c. and 12 Geo. 2. c. 13.

See Weights and Measures.

Bankrupt.

IF fraudulently conveying his Lands or Goods, or any Estate to the Value of 20 l. to delay his Creditors, and not discovering or delivering of a Particular thereof (if he can) to the Commissioners; or shew some accidental Cause by which he is disabled from paying his Debts; shall be indicted at the Sessions of that County where he became Bankrupt, and upon Conviction shall be set in the Pillory two Hours, and have one of his Ears nailed to the Pillory, and cut off. 1 Jac. c. 19.

Upon a Certificate under the Hands and Seals of the Commissioners, that a Commission is issued forth, and the Person proved a Bankrupt, any Justice of Peace may grant his Warrant to apprehend him, and to send him to the Gaol of the County where taken, there to remain till he is removed, by Order of the major Part of the Commissioners, and the Gaoler is to receive him, and to give Notice to the Commissioners forthwith, &c. 5 Geo. c. 24.

Bankrupt not surrendring himself thirty Days after Notice Writing left at his usual Place of Abode, and Notice in the

Gazette

4 & 5 Annæ,
c. 17. Conti-
nued by 7
Annæ, c. 25.
5 Geo. c. 24.
11 Geo. c.
13 Geo. c. 27.
5 Geo. 2.

Gazette of the Meeting of the Commissioners, and submit to be examined on Oath, and upon such Examination not discovering how, to whom, and upon what Consideration he hath disposed any of his Goods or Estate, and all Books, Papers and Writings relating thereunto, and deliver up to the Commissioners all such Estate, &c. as at the Time of such Examination shall be in his Power, and being convicted of wilful Omission upon an Indictment or Information, shall suffer as a Felon without Benefit of Clergy.

If the neat Proceed of the Bankrupt's Estate amounts to 8 s. in the Pound, then the Assignees of the Commissioners shall allow him 5 l. per Cent. not exceeding 200 l.

See 5 Geo. 2. with little Variation.

Bargain and Sale. See Inrolment.
Bark of Trees. See Leather.

Barretry.

Burton's Case,
Cro. Eliz. 148.

In Courts in
the Country.

THIS is an Offence at Common Law, for which a Man may be indicted at the Sessions; and if such an Indictment conclude *contra formam Statuti* (against the Form of the Statute), 'tis not void, tho' there is no Statute which makes it an Offence. For the Act 34 Ed. 3. c. 1. gives the Justices of Peace Power to punish a Barretor, but doth not create the Offence, which is of a mix'd Nature; of which the Justices of Peace cannot hold Plea by Virtue of the Commission of the Peace, but by another Power which extends to Trespass.

1. A Barretor is a common Stirrer up, or Maintainer of Suits or Quarrels in Courts, or in the Country. 8 Rep. 37.

As where many feign'd and unjust Actions or Suits are maliciously stirr'd up in any Court of Record, or inferior Court if any Man of himself, or in his own Causes, is a common Oppressor of his Neighbours by such Suits.

Disturbers of the Peace, any common Quarrellers, Fighters or those that make Affrays.

2. Those who by Force or Fraud detain the Possessions of another which are in Controversy, be it either in Houses, Lands or Goods.

3. Those who invent or spread abroad false Reports by reason whereof many Differences arise among Neighbours.

4. Any common Disturber of the Peace.

These Men any Justice may bind to the Peace or good Behaviour, or they may be indicted at Sessions, and fined.

The Words, *Communis Barretrator* (a Common Barretor), were formerly held necessary to be inserted in every Indictment for *Barretry*; and therefore to alledge, That the Defendant is a Promoter of Suits, or that he is *communis vicinorum Oppressor* (a Common Oppressor of the Neighbourhood), is not sufficient without those Words. 1 *Sid.* 282. *King and Hardwick.*

But it hath lately been ruled otherwise; for an Indictment against the Defendant, for that he is *Quotidianus perturbator Pacis* (a daily Disturber of the Peace), was not quashed, tho' the same Exception was taken to it, viz. the Omission of the Word *Barretrator*. *Hill. 8 Will. B. R. Rex* vers. *Gregory*.

It was formerly held, That it was not necessary to set forth in what Place the Offender was a Barretor; because a Man who is guilty of this Offence, is a common Barretor every where: But of late 'tis ruled otherwise; for if 'tis traversed, and no Place alledged in the Indictment, there cannot be any *Venire facias* awarded to try the Fact.

And now I have mentioned a *Venire facias*, I must also take Notice, that 'tis not necessary it should be returnable at the next Sessions after the Party is indicted; for if he appear, he may be tried at the same Sessions.

It seems essential to conclude this Indictment with the Words, *Contra pacem* (against the Peace), for that he is *Communis Barretrator & Discordiarum inter Vicinas Seminatus, & Pacis Regis Perturbator, in magnum contemptum Domini Regis, & in malum exemplum aliorum Delinquentium*, (a common Barretor and Sower of Discords among his Neighbours, a Disturber of the King's Peace, to the great Contempt of our Sovereign Lord the King, and to the bad Example of other Offenders): All this is not sufficient, if the Words *Contra Pacem* (against the Peace) be omitted. 2 *Cro.* 27. 2 *Roll. Abr.* 82.

But for other small Omissions or Surplusage, the Court of B. R. seldom quash an Indictment of *Barretry*; as where one was convicted and fined 100 l. & *ulterius ordinat' fuit* (and was further order'd) That he be of the good Behaviour, and doth not say how long; this was held to be no Part of the Judgment. 1 *Sid.* 214.

Yet where the Fact was said to be *Anno Regni Dom' nostri* (in the Year of the Reign of our Lord), leaving out the Word *Regis* (King), the Indictment was quash'd. *Godb.* 157.

When the Defendant is indicted for *Barretry* he must have Note of the Particulars, that he may know for what he is charged, otherwise the Court will not allow the Prosecution to proceed to Trial: For otherwise the Charge being so general, it would be almost impossible for him to prepare himself for his Defence. 5 *Mod.* 13 *King and Grove.*

Upon

3 Mod. 97.

Upon an Indictment of Barretry, the Evidence was, That one G. G. was arrested at the Suit of another in an Action of 4000 l. when in Truth he ow'd him nothing, and coming before the Lord Chief Justice to put in Bail, the Defendant appeared there and solicited against him; *sed per Curiam* this is not Barretry, but Maintenance; but where a Man is arrested by another, not with an Intent to recover any Right, but to oppress him, this is Barretry; so is Lending Money to promote and stir up Suits; and in this Case it appearing, that the Defendant did entertain the Prosecutor in his House, and brought several Actions in his Name, where nothing was due, he was found guilty.

An Indictment for Barretry.

Suffex, to **T**HE Jurors for our Sovereign Lord the King wit, upon their Oath present, That J. O. of H. in the said County, Yeoman, on the 26th Day of September in the 5th Year, &c. at Lewes in the said County, was and yet is a Common Barretor, and a continual Disturber of the Peace of our said Sovereign Lord the King, and also on the Day, Year and Place abovementioned was and yet is a common and troublesome Slanderer, Railer, Fighter and Sower of Discord among his Neighbours, so that he hath procured and caused divers Suits and Quarrels then and there and elsewhere in the County aforesaid among divers Subjects of our Lord the King, to the great Contempt of our Sovereign Lord the King, and to the bad Example of other Offenders, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

This Indictment is general, and 'tis almost impossible to make any Defence to it, without a Rule of Court to help the Defendant, *viz.* That the Prosecutor shall give him Notice some Time before the Trial, what Suits he intends to give in Evidence; for otherwise he cannot be prepared to defend himself against that general Allegation, *viz.* *Divers fuit lites movet* (a Mover of divers Suits).

Latch 7.

One *Toplin*, an Attorney, was indicted for Barretry, but had the good Luck to be acquitted; yet he was not discharged; for the Book tells us, That he appearing to the Court to be a notable Knave, was bound to his good Behaviour.

I have been a little the larger on this Title, because I find 'tis but just mentioned by my Lord *Hale* in his Pleas of the Crown, 142.

Bastardy.

IN order to the proper understanding of the Laws relating to Bastardy, it is first necessary to be shewn what a Bastard is; next the Mischiefs arising from the Birth of Children so denominated; and lastly, the Remedies provided by the Legislature against such Mischiefs.

As to the First, all Persons born out of lawful Matrimony are Bastards by the Common Law; and all Persons born within Marriage are legitimate unless there is an apparent Impossibility they should be begotten by the Husband.

As the Husband has the Dominion over his Wife, the Presumption is, that the Child is the Husband's, and this Presumption to prove it a Bastard must be avoided and destroyed by contrary Proof:

As if you can prove the Husband to be castrated, the Issue are Bastards: So if the Husband is under the Age of Fourteen, the Issue are Bastards; for the Law says, that before the Age of Puberty Generation is naturally impossible. *1 Roll. Abr. 358, 359.*

Or by Proof that the Husband had no Access to his Wife from the Time of Conception, to the Time of the Birth of the Child; for if he had any Access, even in the intermediate Time, the Law determines the Child to be his.

Formerly if the Husband was within the four Seas, *i. e.* within the King of England's Dominions, no Proof of Non-access to his Wife was admitted, but the Child was deemed to be his; therefore if the Husband was in Ireland the Child was no Bastard. *1 Roll. Abr. 358. Salk. 483.*

But as this Notion was built on no rational Foundation, it is now entirely departed from; and tho' the Husband and Wife are both in England, if there is sufficient Proof that he had no Access to her, the Child will be a Bastard. *Pendril and Pendril, Mich. 5 Geo. 2.*

In *St. Peters and Old Swinford, Pas. 8 Geo. 2.* Putative Father was admitted as an Evidence to prove the Child a Bastard.

In *Lomax and Holben, Mich. 6 Geo. 2.* Evidence was allowed to be produced to prove the Husband incapable of procreation; but in such Case there must be a strong and pregnant Evidence, which was not in the Case; for a Surgeon only swore that it would do the Man Harm to use carnal Copulation with his Wife, and not that he was incapable of Generation.

In *King and Inhabitants of Bedel, T. 11 Geo. 2.* that a Woman could not be Evidence for or against her Husband to the proving the Child a Bastard; but as the Adjudication

cation in the Order set forth the Proof of the Non-access to be on the Evidence of the Wife, and upon other Proofs on Oaths, and hearing Counsel on both Sides, it was held sufficient.

In *Mich. 8 Geo. 2. King and Reading*, Wife could not be admitted to give Evidence whether Husband had Access to her or not, because it would tend either to a Charge or Discharge of the Husband; but as to the Criminal Conversation the Woman's Evidence must be allowed *ex necessitate rei*, being the only Evidence that is to be had.

How long a
Woman may
go with Child.
2 Cro. 531.
Palm. 9.

My Lord Coke tells us, forty Weeks, or nine Months, accounting thirty Days in each Month, is the *legitimum tempus* (lawful Time).

But *Anno 7 Jac. in B. R.* it was held, that the Husband dying the 23d of *March*, and his Widow being delivered the 5th of *January* following, which is ten Days after the forty Weeks, that the Child was Legitimate; in which Case the Physicians argued, that a perfect Birth may be at seven Months, which is long before the Time of the proper Birth; and this may be occasioned by the Strength of the Mother: So likewise it may be deferred beyond its proper Time, by Cold, hard Usage, Want of Necessaries, Infirmity of Body, or Passion of the Mind.

Ridley's View
of the Civil
Law.

Sir *Tho. Ridley*, who was a learned Man, in his Book of the Civil Law, which he dedicated to King *James* the First, tells us, that in one of the Institutions of *Justinian* it was held, That the Child of a Woman delivered eleven Months after the Death of her Husband, was held legitimate: And the Gloss upon the Constitution mentions a Widow at *Paris*, who was delivered fourteen Months after her Husband's Death; and the Judges there held the Child to be legitimate. But forty Weeks according to our Law, is the most usual Time.

* But where 'tis
only said, that
the Husband
was not in
England, or had
Access to her,
neither at the
Time of her

begetting the Child, or at her Delivery; it was quashed because he might be there in the intermediate Time; and it is necessary that he should be absent all the Time. *Salk. 483. Salk. 122. 5 Mod. 419.*

Where there is a Divorce *a mensa & thoro* (from Bed and Board), the Children born afterwards shall be Bastards, for the Court will intend a due Obedience to the Sentence till the contrary is prov'd; but, if the Husband and Wife separate by Consent, 'tis otherwise; for in such Case Access shall be

intended till the contrary is prov'd. 5 *Annæ, St. George's*
and *St. Margaret's, Salk.* 123.

The next Thing to be considered is, the Mischief which
may accrue from the Birth of such Children, and that was
that a Bastard being *Nullius filius*, the Law looks upon no
one as his Father; so consequently there was no Person to
charge with the Expence of his Education, but it fell upon
the Parish where he happened to be born; and that gave
Encouragement to vicious Persons, when they were under
no other Restraint than Ecclesiastical Censure, to avoid en-
tering into the Marriage State, and live on in a loose de-
bauched Manner, to the great Mischief of the Community
in general; to prevent which several Statutes have been
enacted, as 18 *Eliz. c. 3. §. 2. 7 Jac. 1. c. 4. §. 7. 3 Car. 1.*
4. §. 15. 6 Geo. 2. c. 31. §. 1, 2, 3, 4. Some of which
provide for the Indemnification of the Parish where such
Children are born, and others for the Punishment of the
Mother and the reputed Father.

This is an Offence against the Spiritual and Common
Law, and punishable in both Courts.

He may be bound to the good Behaviour by one Justice, r. What is to
but this is by Virtue of the Power which he hath at Com- be done with
mon Law, as *Conseruator Pacis* (a Conservator of the Peace), the putative
to punish Incontinency; it ought to be proved by the Oath Father before
of a Woman with Child, and then the Justice may send his the Child is
Warrant for the reputed Father. *Vid. 6 Geo. 2. c. 31. §. 1.* born.

A Warrant against the putative Father.

To the Constable, &c.

flex, to **W** Hereas upon the Examination of A. P. single One Justice
wit, Woman, taken upon Oath before me this
ay, it appeareth that she is now with Child: And whereas
the said A. P. hath confessed, that J. L. of, &c. did be-
at the said Child on her Body, and hath before me charged
m with the same: These are therefore in his Majesty's
ame to command you, or some of you, to apprehend the said
L. and to bring him before me, or some other of his Ma-
ty's Justices of the Peace for this County, to answer what
laid to his Charge as aforesaid: And hereof fail not.
iven, &c.

When the Person appeareth before the Justice, then he
must enter into a Recognizance with Sureties for his Appear-
ance at the next Sessions, and so he may be continued upon
till the Child is born. The Condition whereof is, &c.

The Condition of a Recognizance for the Appearance of the putative Father at the Sessions before the Child is born.

THE Condition of this Recognizance is such, That whereas the above-bounden J. L. is charged by A. P. of, &c. single Woman, That he had the carnal Knowledge of her Body at several Times, and that the said A. P. is now with Child by him the said J. L. If therefore the said J. L. shall personally appear before his Majesty's Justices of the Peace at their next General Quarter-Sessions of the Peace to be holden for the East Part of the said County of Sussex at L. then and there to abide and receive what shall be enjoined by the said Court concerning the Premises, and in the mean Time to be of the Good Behaviour; That then, &c.

If he refuse to enter into the Recognizance, then he may be committed.

The Mittimus.

To the Keeper of, &c.

Sussex, to **I** Do herewith send you the Body of J. L. of, &c. wit, Yeoman, who was brought before me this present Day, and charged by A. P. of, &c. to have gotten her said Child: He the said J. L. having refused before me to find Security for his Appearance at the next General Quarter-Sessions of the Peace to be held for this County, to answer unto the said Charge. These are therefore to require you to receive the said J. L. into your Custody, and him safely to keep in the common Gaol, until he shall be from thence discharged by due Course of Law: And hereof fail not. Given under my Hand and Seal, &c.

Order.

If he enter into such Recognizance as aforesaid, nothing more is to be done till the Child is born; and then two Justices, *Quorum unus*, who are next the Place where 'tis born, may examine the Matter, and order three Things, *viz.* The Punishment of the Father and Mother. 2. The Relief of the Parish in Part, or in all. 3. They may charge the Parents with Payment of Money weekly for Relief of the Child.

If the two Justices cannot agree in making their Order, then it may be referred to the Sessions to be re-examined; but it must be again heard before the two Justices, with the Direction

Direction of the Court, because the Sessions cannot make an original Order in Bastardy.

Before they make their Order, 'tis usual for them to send their Warrant to bring the reputed Father and Mother before them, with such Witnesses as they shall think fit.

An Information was moved for against the Justice for making an Order against a Man as Father of a Bastard Child, without ever summoning him before him, and of which at the Quarter-Sessions he was found not to be the Father, and could have proved the same before the Justice, if he had been admitted. *Per Curiam*, No Summons is requisite, for that would be giving a Man Notice to run away; but the Justices should bring him before them by Warrant, and cited the *King* and *Phipps*, and *King* and *Holland*; and the Affidavit not expressing that there was no Warrant, it was order'd to be amended: To prove that an Information might be granted in this Case, were cited the Words of 18 *Eliz. c. 3.* which intend a legal Examination, which this was not, because one Side only was heard, and the Plaintiff lost the Benefit of being examined Face to Face; and cited *King* and *Gregg*, *Mich. 13 Geo. 1.* and *King* and *Holland*, *Trin. 5 & 6 Geo. 2.* where it was held, the Party aggrieved might have such Remedy by Complaint to the Court; and *King* and *Venables*, *Pasch. 11 Geo. 1.* *King* and *Allington*, *Hill. 12 Geo. 1.*

The Form of the Warrant.

To the Constable, &c.

Suffex, to wit, **W**Hereas A. P. of, &c. hath lately been delivered of a Bastard-Child, yet living, and likely to be chargeable to the Parish of, &c. And whereas the said A. P. hath charged J. L. of, &c. to have begotten the said Child on her Body: These are therefore in his Majesty's Name, to command you to bring the said J. L. before us, on Wednesday the 25th Day of this Instant September, at Ten of the Clock in the Morning of the same Day, at the House of, &c. to be examined by us concerning the Premises; and that you may give Notice to the said A. P. of the Time and Place aforesaid, that she may be there also present; and that you likewise give Notice to M. A. of, &c. S. W. of, &c. that they are required to appear at the Time and Place aforesaid, to testify what they know concerning the Premises, to the End that such Order may be made therein as to Justice doth appertain; and that you certify unto us what you have done in the Execution of this Precept at the Time and Place aforesaid. Given under our Hands and Seals, &c.

Two Justices,
Quorum unus.

A Bastard of a Person able to keep it, and not likely to be chargeable to the Parish, is not within the Statute of 18 Eliz. Cro. Car. 436. *Salter and Brown.*

The Order.

Order.

Note; The Act says in or next unto the Limits, &c.

N. B. The Justices must adjudge in what Parish the Child was born; and for

Suffex, to **T**HE Order of H. P. and R. B. Esqs; two of wit, his Majesty's Justices of the Peace for the said County; one whereof is of the Quorum, and both now residing within the Limits where the Parish-Church of H. in the County aforesaid standeth, the 25th Day of September in the Year of our Lord 1701. according to the Form of the Statute in that Case made and provided, concerning a Male Bastard-Child lately born in the said Parish of H. of the Body of A. P. of, &c. single Woman; which Bastard-Child, ever since its Birth, hath been, and is still chargeable to the said Parish, and is likely so to continue.

not doing it their Order was quash'd. King and Godfrey

2 Raym. 1363.

First, Upon Examination of the Cause and Circumstances of the Premises taken upon Oath before us, and due Consideration thereof been likewise had by us, we * do adjudge J. L. of, &c. Yeoman, to be the putative Father of the said Bastard Child; and we do also order, That as well for the Relief of the said Parish of, &c. in Part, as also for the Provision and Maintenance of the said Bastard-Child, that he the said J. L. shall weekly, and every Week, from the Time of the Birth of the said Child, and so long as the same shall be chargeable to the said Parish of, &c. pay or cause to be paid unto the Church-wardens or Overseers of the Poor of the Parish of, &c. for the Time being, the Sum of 2 s. for and towards the Maintenance of the said Child; and shall likewise pay, or cause to be paid to the Church-wardens or Overseers of the Poor of the Parish aforesaid for the Time being, the † Sum of 4 l. within three Months after the said Bastard-Child shall arrive at his Age of twelve Years, for and towards the putting forth the said Child to be an Apprentice. And farther, We do hereby order, That the said A. P. shall every Week, for so long Time thereof as the said Child shall be chargeable as aforesaid, and she shall not keep the same, pay, or cause to be paid unto the Church-wardens or Overseers of the Poor of the Parish of, &c. for the Time being, Six-pence, for and towards the farther Maintenance of the said Child.

† It was a Question, Whether the Justices have Power to order a Sum in Gross. 1 Vent. 336. 1 Salk. 124. But it is now adjudg'd they may. Mich. 12 Annæ, Queen and Crisp, Pasch. 1 Ann. Queen

and Stephenson, Mich. 10 Ann. And in King and Blackwel, Mich. 4 Geo. 1. Exception was taken to an Order of Bastardy, because the Justices order'd the putative Father to pay Four Pounds when the Bastard came to the Age of twelve Years to bind him Apprentice.

In *Queen and Clogg*, Trin. 11 Ann. Security shall not be given to perform the first Order till the Contingency happen'd, but Security to indemnify the Parish is good.

And in *King and Buckle*, 4 Geo. 1. in an Order of Bastardy, the Justices have no Power to order the Defendant to give Security to perform their Order, or to order an Attachment against the Defendant.

In Order of Bastardy one of the Objections was, that it was awarded by the Order, that the Father should give Security both for the Performance of the Order, and likewise for indemnifying the Parish for the future. *Curia*: The giving Security was a Thing very reasonable in itself; but since there have been former Opinions of the Court, that the Justices have not a Power to award the giving Security for the due Performance of their Order, until such Time as their Order has been contain'd, for then they have; and for this Reason the Order was quash'd: But as for giving Security for indemnifying the Parish, 'tis right. *King and Miles*, 1 Geo. 1. *Cas. in L. & Eq.* 271.

And in *King and Messenger*, Trin. 8 & 9 Geo. 2. it was resolv'd, that they had no Power to take Security for Performance of the Order, till some Part of the Order was disobey'd.

If Notice should not be given to the putative Father till the Sessions is past after the Order made, so that the Party is deprived of the Benefit of his Appeal; yet *B. R.* would not quash the Order, but referr'd it to the Justices in Sessions to discharge or affirm it. *Style* 326. 2.

This Order being a Judgment upon the Parties, is not to be respited without paying what is order'd, if it be a Sum in Gross, as 'tis usual, besides weekly Payments.

And none but the Justices have Authority to declare who is the reputed Father; but if they are unreasonable in the Sum allowed for the Relief of the Parish, *B. R.* may reform it; as if they order 2 *d.* per Week for the Maintenance of a Child.

Appeal from an Order of two Justices, by which *R. W.* was adjudg'd to be the putative Father of a Bastard-Child, and order'd to pay so much weekly to the Overseers of the Poor; the Sessions confirm'd the Order, and committed the said *R. W.* for Non-payment of the Money; and this Matter being return'd on a *Habeas Corpus*, it was objected, That an Order to pay so much to the Overseers is void; *sed per Curiam*, before there were any Overseers, the Justices might order the Money to be paid to two or three of the principal Inhabitants; and if so, then Payment to the Overseers is good; but then it was objected that the Sessions ought not to commit, but to proceed upon the Recognizance, which is true, if they proceed on the Statute 18 Eliz. but if on the Statute 3 Car. 1. they may commit.

1 Sid. 363.
King and Perkassie.

1 Salk. 122.
Queen and Welton.

Where the Justices at Sessions proceed by way of Appeal, it is by Virtue of 18 *Eliz.* and then they have no Power to commit, but must proceed on the Recognizance taken by the two Justices; which two Justices may commit the Party if he will not give such Recognizance, and not otherwise: And it does not signify whether the two Justices have actually taken the Recognizance or not; if not, it was a Neglect in them; but the Sessions have no Power in such Case to commit. But if the Sessions proceed originally on 3 *Car.* 1. they may commit for not performing their Order. 2 *Rayn.* 1157. *Queen and West.* 11 *Mod.* 59. S. C.

1 Salk. 124.
Queen and
Odam.
Queen and
Clogg, Trin.
11 Ann. Order
to reimburse
Parish their
Charges, from
the Birth of the
Child good, even for the Charges after the Child is seven Years old.

Order made by two Justices, That the putative Father should pay 9 *l.* for the Maintenance of a Bastard; and this upon Sight of the Order adjudged good; for it may be for Indemnifying the Parish for what Charges they were at before the Father was taken; and by the Statute the Justices are empower'd to take Order for the Relief of the Parish by Payment of Money weekly, or other *Sustentation of the Child.*

And regularly these Things are required to make a good Order:

In King and
Haslock, H. 7.
Geo. 'tis fatal if the Justices are not mentioned to be of the County.

1. It must be made by two Justices, *Quorum unus.*

2. They must be next the Place where the Parish is, which is to be relieved.

Style 154.

3. It must be made at a private Meeting, and not at Sessions.

4. It must be concerning a Bastard-Child, and so expressed, and likely to be chargeable, &c. It must appear how long the Father shall maintain it. Style 154. 1 *Vent.* 37.

Contra Salk.
480, 478, 121.
1 *Mod.* 20.

Order that the Father of a Bastard-Child should allow 2 *s.* a Week for seven Years, and the Mother should keep it, allowed good and consistent. *Cas. & Res.* 208. So Order for weekly Payment till the Child was eight Years old, held good. *King and Boniface*, 2 *Keb.* 300.

Order'd that the reputed Father shall pay to the Churchwarden weekly, from the Time of the Birth of the Children until they shall attain their respective Ages of twelve Years, if they shall so long continue chargeable; and when each of them shall attain their respective Ages of twelve Years, to pay Four Pounds to put him out Apprentice; and this was held good. *King and Blackwell*, *Mich.* 4 *Geo.* 1. and the same

same Point resolved *Caf. L. & Eq. 85. and H. 2 Geo. 1. King and Stone.*

5. The Place of Birth must be alledg'd; for otherwise the Child may be born where the two Justices have no Jurisdiction; and it must likewise appear, that it was born in the Parish to which Relief is order'd. *Style 14, 368. Caf. L. & Eq. 271.*

6. It must be made pursuant to the Act, viz. to relieve the Parish in Part, or in all, and for the Relief of the Child by a weekly Maintenance. In some Orders, the Word *Educacion* is inserted, but that hath been excepted against.

7. It must directly affirm who is the reputed Father. *Sid. 363. King and Perkass.*

Moved to quash an Order for Removal of a Bastard, because it only says of a certain Person, without naming him. Ch. J. if the Order had said of a certain Person unknown, it had been good; but this is naught. *Queen and Southwel, Mich. 11 Ann.*

It need not say the Child is likely to become chargeable, for as a Bastard he necessarily is so. *Salk. 475. and Queen and Cozens, Trin. 11 Ann.*

But an Order is ill, if it doth not appear that one of the Justices is of the *Quorum*; if the Money is order'd to be paid till the Child is fourteen Years old, when it ought to be so long as it shall be chargeable to the Parish; if the reputed Father is order'd to give such Security as the Church-wardens shall think fit. *Sid. 222. King and Sharp. The Reporter says the Order seems to be bad, but does not say upon what Exception. Contra L. & Eq. 85.*

So if the Order is, that one shall contribute Half the Charges, because he suffer'd a Soldier to get his Servant with Child. *Style 207.*

The Examination of the Woman must be by two Justices in Respect of Bastardy, as well as the ordering Part. *King and Beard, Salk. 478. 6 Mod. 180. Queen and West, S. P.* For the Examination is a judicial Act, and ought to be by both; and 'tis not enough that one should examine and make Report to the other, but if they are both present and one only examines, 'tis well; for 'tis in Fact the Examination of both.

As to the third Rule above-mention'd, the Statute of 3 Car. 1. cap. 4. (by which divers Acts are continued, repealed and some made perpetual), gave the Sessions Power to examine all Things concerning Bastardy, which the two Justices had before; but what was enacted by that Law, was to continue only (in this Case) to the next Sessions of Parliament, which being long since expired, the two Justices have now the original Jurisdiction again, and their Order shall bind

bind till avoided by Appeal. 1 Vent. 175. *Watkins and Edwards.*

2 Bulst. 341.
Jones 330.
If an Order by
two Justices is
reversed upon
Appeal upon
the Merits, the
Party is dis-
charged, and
no subsequent
Order can bind
him. 2 Raym.
1423.

Now upon the Appeal, the Sessions must either affirm or quash the Order made by the two Justices: They cannot make a new one; neither, after 'tis reversed, can any other Sessions make another Order, because upon such Reversal the Statute of 18 *Eliz.* is satisfied, and no other Justices can intermeddle with it; and therefore where an Order is discharged upon an Appeal, the Party who was charged is absolutely acquitted. 1 Vent. 59. And unless the Father can be found, the Court said the Justices of Peace must keep it themselves. What warrants such Opinion, with due Reverence, I can't find out; for if the putative Father can't be found out, or is not sufficient, the Parish where the Child is born must maintain it, and the Discharge of the Justices Order can no ways charge them with it.

But the Sessions may commit, as the Justices might have done, by the Statute 3 *Car.* 1. unless the Party give Security to perform the Order; 'tis otherwise if they proceed on the Recognizance, for then they cannot commit. *Salk.* 122.

An Order was made, to pay such Charges as the Parish had been at; and did not say, that the Child was likely to be chargeable, &c. yet it was held good. 1 Vent. 37. *King and Nelson.*

An Order was made for the Parishioners of *B.* to receive a Bastard-Child, and they refusing were indicted for a Contempt, setting forth, *quod cum*, (that whereas) an Order was made, &c. for which Reason it was quashed, because it was not positively said, that an Order was made for the Parishioners to receive it. *Trin.* 5 *W.* 3.

Westbury and
Cofton, *Salk.*
532. *Salk.* 474,
121. 6 *Mod.*
213.

A Woman big with Child was removed by an Order from *B.* to *R.* and there she was delivered; *R.* appealed, and on the Determination of the Appeal she was sent back to *B.* and the Child ought to be sent with her, for by the Appeal the Settlement was suspended; but now the Right appears to be that the Mother should be settled in *B.* and if so, her Settlement is avoided in *R.* *ab initio.*

5 *Mod.* 419.
1 *Salk.* 122.
Queen and
Murray.

Upon a Special Order of Sessions the Question was, If the Husband is beyond Sea during the whole Time the Wife is with Child, whether this is a Bastard within the Statute 12 *Eliz.* c. 13. and adjudged, that it was; but because it did not appear by the Order that the Husband was absent all that Time; and it being in the Disjunctive, that the Husband was not here *at the Begetting or Birth of the Child*, the Order was quash'd; for if he was here at either of these Times, 'tis sufficient.

Upon

Upon a Special Order of Sessions the Fact stated for the Opinion of the Court was, *W. R.* was divorced *a mensa & thoro* (from Bed and Board), and then she lived in Adultery, and had several Children by another Man, born in the Parish of *St. Giles*, and registred as his Children, and by his Name: Adjudged that they are Bastards because the Court will intend a due Obedience to the Sentence of *Divorce*, unless the contrary appear; but if the Husband and Wife consent to live separate, the Children born after such Separation shall be legitimate, because his Access to his Wife shall be presumed; but if 'tis found by a Jury that there was no Access, then they are Bastards.

1 Salk. 123.
St. George's,
and St. Margaret's.

'Tis true, no Time is limited by the Statute, and therefore Exceptions have been taken to Orders to pay so much a Week for a certain Number of Years; but this Exception hath been disallowed, especially when 'tis also express'd in the Order for so long Time as the Child is a Charge, &c.

Mich. 2 Will.

Upon a Motion to quash an Order, the putative Father must be in Court; the Objection was, That the Order did not set forth that the Child was *likely to be chargeable*; but adjudged, that it is self-evident that *Bastards* are likely to be chargeable.

2 Salk. 475.
The same laid down in King and Dr. Greaves, Pasch. 10 Geo. 2. and

no Exception can be taken to the Order, unless the reputed Father is present, so that he may be bound over. King and Bidell, Trin. 11 Geo. 2.

An Order of Bastardy was discharged on an Appeal to the next *Quarter-Sessions after Notice*, and now this Order of Sessions was discharged, because by the Statute the Appeal must be to the next *General Sessions after Notice*, and there may be a *General Sessions* before a *General Quarter-Sessions*, as in *London* and *Middlesex*, where there are four *General Sessions* in a Year.

2 Salk. 482.
King and Shaw.

Order to remove *E. S. late of the Parish of L.* single Woman, and *W.* her Son, from the Parish of *M.* to the Parish of *L.* for that by Fraud of the Parish of *L.* she was delivered of the said *Wm.* her Bastard Son, in the Parish of *M.* It was objected, that where a Bastard is born, there it is settled, unless some other Settlement appears; but in this Case it did not appear that the Mother was settled in *L.* 'Tis true, 'tis said that *E. S. late of L.* single Woman, &c. which is only a Description of her Person, and an Allegation of the Place, but not that she was legally settled there. The Court inclined she ought to be alledged to be a legal Inhabitant in the Parish of *L.* but would not quash the Order, because nine Years since made.

5 Mod. 204.
King and Inhabitants of Litley.

In *King* and *Greaves*, Pasch. 10 Geo. 2. that the Parish where born is only to be indemnified; and that if the Bastard has acquired a Settlement, the Father is discharged; for

for the Meaning of the Law is only to charge him during the Infancy of the Child.

In Case of the *King and Parish of Bowham in Essex*, if a Woman with Child is travelling without Fraud of the Parish in which she is settled, and in such Travel is deliver'd of her Bastard, it shall in that Case be settled where it was born; otherwise, if there was Fraud. 6 *Mod.* 213.

In *Budworth and Dumphy*, 1 *Salk.* 123. Resolved first, that an Order made on the Overseers of a Parish by two Justices for raising a Sum towards the Maintenance of a Bastard or poor Person, does not determine the Settlement of the Person in that Parish; for the Right of Settlement is not contested but presumed, that the Clause of 13 & 14 *Car. 2.* that the District, Township, &c. shall provide for their Poor, &c. does not extend to Bastards; but if a Bastard is grown up and by Accident becomes impotent, he may be relieved as a poor Person within the Statute.

In *Hinton and Lyd Linch*, *Trin.* 15 *Geo. 2.* a single Woman went into the Parish of *L.* with a Certificate from *H.* lived there a Year, and then had a Bastard-Child: The sole Question was, whether the Child should be settled in the Parish where born, or in the Parish giving the Certificate. *Court:* The Certificate must be taken to be good, and all Fraud be laid out of this Case, it being a Year that she dwelt in the Parish before she was delivered of the Child; and where-ever this Court in determining a Settlement adjudges upon the Point of Fraud, that Fraud must be expressly stated; for as Fraud is odious 'tis never to be presumed. The Cases hitherto adjudged, as to this Point, have either depended on Point of Fraud or an illegal Removal. So where the Child is born in a Gaol, he shall be settled in the Parish where his Mother is; for she shall be construed to be in *Custodia Legis*, and in all other Respects a Parishioner. But the present Case stands intirely on 8 & 9 *W. 3.* which for the Encouragement of Labour and Industry, and that poor People might find Work in other Parishes, where they had not sufficient in their own, and yet that those Parishes might not be over-burthen'd with Poor, gave a Power of removing them by Certificate, which Certificate obliges the Parish to whom given to receive and continue them in that Parish till they became actually chargeable, and then such Person is to be removed, together with his or her Family (and in another Place, his or her Children) conveyed or settled in the Parish or Place from whence such Certificate was brought: the Question then is, whether the Bastard is included under the Words *Family or Children*, and we take it he is not: for the Law takes no Notice of Bastard-Children, they are *fili nullius, filii populi*, and are *prima facie* settled where born, and don't follow the Rule of *Partus sequitur Ventrem*, and

cited *King and New Windsor*, that Illegitimate Children were not included under the Expression of Child or Children: The Order that removed her to the Place that gave the Certificate was quashed.

In the Case of *King and New Windsor*, the Parish of *A.* granted a Certificate to a Man and his Wife, who by Virtue thereof went to *B.* tho' in Truth they were never married; yet it shall bind the Parish, giving the Certificate, from saying they were not married, as well to the Wife and Children as to the Man himself; and in that Case the Court declared that Illegitimate Children were not within that Act, and that wherever any Act of Parliament speaks of Children generally, it means legal Children.

By an Order of two Justices, *Glegg* was adjudged the putative Father of three Bastard-Children, and he was ordered to pay 10 *l.* to the Overseers of the Poor, &c. for the Charges that the Parish had sustained, by Reason of the said Children, and 2 *s.* 6 *d.* per Week for so long Time as they or either of them should be chargeable to the Parish; which Order was confirmed on an Appeal; and both the Orders being remov'd into *B. R.* by *Certiorari*, it was objected against the Original Order,

Mod. Ca. L. &
E. 3. S. C.

(1.) That it did not appear that *Glegg* was duly summoned to appear before the Justices; 'tis true, the Order set forth that he had Notice to appear, but not for what Cause.

(2.) By the Order the Father was charged to pay 10 *l.* whereas the Justices have not Power to charge him with a Sum in Grofs.

(3.) He was charged by one Order to be the Father of three Bastard-Children, when there should be as many Orders as there were Bastards. The Court was of Opinion, that if the Defendant was not duly summoned to appear, and for what Cause, the Order ought to be quashed; but as to the second Objection a putative Father may be charged with a Sum in Grofs, though this is seemingly against the Statute 18 *Eliz. c. 3.* by which the two Justices have Power to charge the Mother or reputed Father with the Payment of Money weekly; but by the same Statute, they have likewise Power to take Order for the Relief of the Parish, which must be intended Relief against that Charge which it hath sustained, as well as against the Charge which it may sustain.

As to the third Objection the Court gave no Judgment but that the Parish should have Time to shew Cause whether the Defendant was duly summoned. *Mich. 1721. B. R. The King vers. Glegg.*

If the Child dies after the Order is made, and before the next Sessions, and no Security be given to perform the Order; then when the Party appears at Sessions, they may order

der him to pay the Charges, upon Proof of serving the Order.

But if Security hath been given, then the Sessions have no further Power; but the Bond must be put in Suit, if the Condition is not performed.

The Bond must be made to the Church-wardens, &c. and their Successors, viz. J. B. de, &c. Et, &c. Teneri, &c. E. F. & G. H. *Ecclesiæ Guardian' ac Supervisor' Pauperu' de parochia de A. in Com' de D. Administrator', Successor', vel assign' suis, &c.* (viz. J. B. of, &c. And, &c. are held, &c. to E. F. and G. H. Church-wardens and Overseers of the Poor of the Parish of A. in the County of D. their Successors, Administrators or Assigns).

The Condition of the Bond.

* If the Bond is given before the Birth of the Child, then fav, viz. Whereas, &c. was lately gotten with Child being then and still unmarried, to which Child, &c.

THE Condition of this Obligation is such, That whereas A. P. of, &c. hath lately been * delivered of a Female Bastard Child within the Parish of, &c. of which Child the above-bounden J. L. is adjudged to be the Father: If therefore the said J. L. his Heirs, Executors or Administrators, or any of them, do and shall from Time to Time, and at all Times hereafter, acquit, discharge, and save harmless, as well the above-named T. H. and F. G. Church-wardens of the Parish of, &c. aforesaid, and their Successors for the Time being, as also the Inhabitants and Parishioners of the said Parish, of and from all Costs, Charges, and Troubles whatsoever, for or by reason of the Birth, Maintenance, Nourishing, and Bringing up the said Child, and of and from all other Suits, Charges, Troubles and Demands whatsoever, touching or concerning the same; then this Obligation to be void, otherwise to remain in full Force and Virtue.

If he will not give such Security as aforesaid, but will appeal from the said Order to the next Sessions, then he must enter into a Recognizance for his Appearance there. The Condition whereof is:

The Condition of a Recognizance to appear at Sessions after the Order made:

THE Condition of this Recognizance is such, That if the above-bounden J. L. shall personally appear at the next General Quarter-Sessions of the Peace to be holden at L. for the East Part of the County of Sussex, and abide such Order as shall be then made by the Court concerning a Bastard-Child, now born of the Body of A. P. of, &c. whereof he the said

said J. L. is now charged and accused to be the reputed Father, if any such Order shall be then made; and in Default of such Order to be then made or taken by the said Court, if the said J. L. do and shall perform the Order therein already made by H. P. and R. B. two of his Majesty's Justices of the Peace for the said County, that then, &c.

But if upon the Service of the Order, he refuses to enter into such Recognizance for his Appearance, or to give Security, as aforesaid, then the two Justices who made the Order may commit him.

The Form of the Commitment for not obeying the Justices Order.

To the Constable of, &c. and to the Keeper of, &c.

Suffex, to wit, **W** Hereas by an Order made and subscribed by Two Justices, us on the 7th Day of October last, concerning Quorum unus. a Female Bastard-Child, lately born of the Body of A. P. a single Woman, in the Parish of H. in the County aforesaid, and chargeable to the said Parish; we have adjudged J. L. of, &c. to be the reputed Father of the said Bastard Child, according to Form of the Statute in that Case made and provided; and amongst other Things in the said Order contained, we have ordered, That the said J. L. shall weekly pay, or cause to be paid to the Church-wardens or Overseers of the Poor of the Parish of, &c. the Sum of two Shillings for the Maintenance of the said Child; and shall likewise pay unto them the Sum of 4 l. within three Months after the said Child shall attain her Age of twelve Years, to put her to be an Apprentice; and likewise that the said J. L. do and shall give sufficient Security to them to indemnify the said Parish. And whereas it hath been duly proved before us, that the said J. L. had personal Notice thereof, but hath not hitherto performed the same, or given Security so to do, or enter'd into a Recognizance to appear at the next Sessions: These are therefore, in his Majesty's Name to command you to apprehend the said J. L. and to deliver him to the Keeper of the Gaol aforesaid, to be by him kept therein without Bail or Mainprise, except he shall give sufficient Security to perform the said Order, or enter into a Recognizance personally to appear at the next General Quarter-Sessions of the Peace to be holden for the East Part of the said County of Suffex, to abide such Order as the Court shall there take concerning the Premises, if any such Order shall be then made; and if not, then to abide and perform the Order already made, as aforesaid: Commanding also you the aforesaid Keeper of the said Gaol, to receive the said J. L. into your Custody, and him safely to keep

keep, according to the Purport of this Precept. Given under our Hands and Seals this 10th Day of October, &c.

Corporal Punishment of reputed Father and Mother.

The two Justices may inflict a Corporal Punishment upon the reputed Father, by Virtue of the Statute 18 Eliz. But this is not usually done but where he is very poor, and not of Ability to discharge the Parish.

A Warrant for the Punishment of the reputed Father by Whipping.

To the Constable, &c.

Two Justices,
Quorum unus.

Suffex, to **W** Hereas A. P. of, &c. in the said County, wit, *single Woman, was lately deliver'd within the said Parish of a Female Bastard Child, begotten and born out of lawful Matrimony, which Child is yet living, and chargeable to the said Parish, and is likely so to continue: And whereas, upon our Examination of the Cause and Circumstances according to the Statute in that Case made and provided, we have adjudged J. L. of, &c. to be the reputed Father of the said Bastard Child: Now for the Punishment of the said J. L. we do hereby order and appoint you to strip, or cause him to be stripped naked from the Middle upwards, and to tie or bind him to some Cart or Duncote; and being so stripped and tied, to cause him to be drawn upon some Day between the Hours of nine and twelve in the Forenoon, from the House of, &c. to the, &c. and on the Way to be whipped in such Manner as is usual in such Cases; and you are with all convenient Speed to make known unto us what you have done concerning the Premises: And hereof fail not at your Perils. Given under our Hands and Seals, &c.*

7 Jac. 1. c. 4.
sect. 7.

By the Statute of 7 Jac. the Justices of Peace may commit lewd Women to the House of Correction, who have Bastards that may be chargeable to the Parish, there to be punished and set to work for a Year; and if they offend a second Time, not to be enlarged without giving Security to offend no more.

This is only in such Cases where they have been punished for the first Offence; for if a Woman hath a Bastard, and is not punished for it, and afterwards hath another; tho' this is the second Offence, yet she is not to be continued in Prison 'till she give Security not to offend any more. 2 Balf. 348.

But if the Woman will discharge the Parish, she cannot be punished by this Act; yet by Virtue of 18 Eliz. she may be punished

punished by Whipping, as the reputed Father may be; and for this, see the last Warrant, *mutatis mutandis*.

Mittimus of the Mother of a Bastard to the House of Correction.

To the Constable of, &c. and to the Keeper of the House of Correction for the said County, at L.

Suffex, to **W** Hereas A. P. of, &c. hath lately been delivered in the said Parish of a Female Bastard Child, yet living, and chargeable to the said Parish, and likely so to continue: These are therefore to command you the said Constable to apprehend the said A. P. and her safely to convey to the House of Correction aforesaid, and to deliver her to the Keeper thereof, together with this Precept: Commanding also you the aforesaid Keeper to receive the said A. P. into your Custody, and there to punish her, and to set her on Work for and during the Space of one whole Year next ensuing, according to the Form of the Statute in that Case made and provided: And hereof fail not at your respective Perils. Given under our Hands and Seals, &c.

Two next Justices, Quorum unus. 7 Jac. 1. c. 4. sect. 7.

By this Precedent, you may see that she is not to be sent to the House of Correction till the Child is born, and the Woman well again; and that the Child must be living, and chargeable to the Parish.

A Warrant against the Mother for the second Offence.

To the Constable, &c. and to the Keeper of the House of Correction at L. for the County aforesaid.

Suffex, to **W** Hereas A. P. of, &c. a lewd Woman, hath been formerly delivered of a Bastard Child in the Parish of, &c. born of her Body out of lawful Matrimony, and chargeable to the said Parish: And whereas she hath again offended the second Time in the like Nature: These are therefore to command you the said Constable to take the said A. P. and her safely to convey to the aforesaid House of Correction, and there to deliver her to the Keeper thereof, together with this Precept: Commanding also you the said Keeper to receive the said A. P. into your Custody, and there to punish her, and set her to Work until she shall give good Security for her good Behaviour not to offend in the like Manner again: And

Two Justices, Quorum unus. 7 Jac. 1. c. 4. sect. 7.

hereof fail not at your respective Perils. Given under our Hands and Seals, &c.

13 & 14 Car.
2. c. 12. sect.
19.

By the Statute of 14 Car. 2. the Church-wardens and Overseers of the Poor of any Parish where a Bastard Child shall be born, may seise so much of the Goods, and receive so much of the Rents of the Lands of the reputed Father and lewd Mother, as shall be ordered by two Justices; which Order must be confirmed at Sessions; and this is for and towards the Discharge of the Parish.

13 & 14 Car.
2. c. 12. sect.
19.

But they cannot sell the Goods by Virtue of the Order of the two Justices: The Sessions must make an Order for that Purpose.

If the putative Father runs away, yet an Order to fix the Children on him is good; the Justices have Power to charge his Estate, and the Statute of Limitations does not extend to this Case. *Queen and Miles, T. 11. Ann. Queen and Cozens.*

An Order for the Relief of the Parish out of the Estate of the reputed Father.

To the Church-wardens and Overseers of the Poor of, &c. and to every of them.

Two Justices,
Quorum unus.
14 Car. 2. c. 12.
The Justices
must ascertain
what they
think proper to
be raised out of
such Estate,
and not leave it
to the Discre-
tion of the Of-
ficers; and an
Order was
quashed for
that Reason.
Raym. 858.

Suffex, to **W** Hereas it appeareth unto us, upon the Complaint of the Church-wardens and Overseers of the Poor of the Parish of, &c. that J. L. the reputed Father of a Bastard-Child lately born in the said Parish, is departed from his usual Place of Abode, and hath left the said Child upon the aforesaid Parish, though he hath a sufficient Estate to charge and indemnify the same: These are therefore to require you to seize and take so much of the Goods and Chattels of the said J. L. and to receive so much of his Rents yearly issuing out of his Lands, as will amount unto the Sum of, &c. which we hereby appoint you to receive for and towards the Discharge of the said Parish, according to the Form of the Statute in the Case made and provided. Given under our Hands and Seals, &c.

This Order being confirmed at the next Sessions, the Court may then make an Order for the Sale of the Goods.

The Constable having a Warrant to apprehend the Father and willingly or negligently suffering him to escape, one Justice may bind him over to the Sessions, and there he may be ordered to contribute towards the Maintenance of the Child or may be fined.

The Punishment of the Officers for negligent Escape.

So may any Person who shall perswade, procure, or convey away the reputed Father, or who suffers the Mother to escape or conveys her away.

A Person indicted for conveying away a Woman with Child to free one Parish from the Charge, and lay it upon the other; and held the Indictment lay. *King and Dennis H. 6 Geo. 1.*

And in *King and Horniblow, Mich. 10 Geo. 2.* the Court were of Opinion that Indictment lay for spiriting away the Mother of a Bastard Child; so that no Evidence could be had to prove who was the putative Father.

But this is not by Virtue of any of the Statutes made against Bastardy; 'tis only a discretionary Act in the Justices, which the Conservators had at Common Law.

An Indictment will lie against the Defendant for Conspiring to charge another with a Bastard-Child; for 'tis a Disgrace and an Injury to his Reputation.

Note; By the Stat. of 6 G. 2. After 24 June 1733. if a single Woman be delivered of a Bastard-Child, which is likely to become chargeable to any Parish or extraparochial Place, or shall declare herself to be with Child of a Bastard likely to be so chargeable, and on Oath before a Justice of Peace charge any Person with having gotten her with Child, the Justice on Application of the Overseers of the Poor or other substantial Inhabitants may issue his Warrant for immediately apprehending the Person so charged, and unless he give Security to appear at the next General Quarter-Sessions for the Place, and perform the Orders made in Pursuance of the Act 18 Eliz. concerning Bastards, commit him to the common Gaol or House of Correction. 6 Geo. 2. c. 31. sect. 1.

If such Woman die, or be married before she be delivered, or miscarry of such Child, or it appear that she was not with Child at the Time of such Examination, the accused Person shall be discharged from his Recognizance, or immediately released out of Custody. Sect. 2.

On Application of the Prisoner, or any Person on his Behalf, to a Justice of the Place, such Justice is required to summon the Overseers of the Poor or substantial Householders of such extraparochial Place, to shew Cause why the Prisoner should not be discharged, and if no Order appear to have been made pursuant to the Act 18 Eliz. within six Weeks after the Woman's Delivery, the Justice shall discharge him. Sect. 3.

No Justice may send for any Woman, till a Month after her Delivery, in Order to be examined concerning her Pregnancy, or compel her before Delivery to answer any Questions relating thereto. Sect. 4.

Battery; See Assault.

Bawdy.

IT comes under the Cognizance of the Temporal Law as a common Nuisance, not only from the Danger of the Breach of the Peace, by the drawing together dissolute and abandoned Persons; but likewise on Account of its Tendency to corrupt the Manners of both Sexes, by such an open Profession of Lewdness. *Hawk. P. C. 196.*

That the Offenders are punishable, not only by Fine and Imprisonment, but likewise with such infamous Punishment as the Court shall think fit; as Pillory, &c.

3 Inst. 205,
206.

By the antient Laws of this Kingdom, there was no Difference in the Punishment of Fornication and Adultery, for both were Offences inquirable in Leets and Tourns, and punish'd by Fine and Imprisonment.

The Book called *Domesday* is very particular in some of these Fines, and giveth an Account to whom they did belong, and the Sum in which the Offenders were fin'd.

3 Inst. 206.

In *Suffex*, an adulterous Person of either Sex was fin'd usually at 8 s. 4 d. and that both in that County and in *Kent*, the King was intitled to the Fine of the Man, and the Archbishop to that of the Woman.

3 Inst. 205,
206.

Our Histories mention eighteen Bawdy-Houses, which were publickly known and allow'd on the Bankside in *Southwark*; these were reduc'd to twelve by *H. 7.* and were afterwards suppress'd by the Proclamation of his Son and Successor, *H. 8.* in the 37th Year of his Reign.

Ibidem.

But it was always held to be an infamous Office to keep a Bawdy-house; and therefore formerly when any Man let a Lease of his House, there was an expresse Covenant inserted, That the Tenant should not entertain any lewd Women there.

And now at this Day, any Constable, upon Information that a Man and Woman are about to commit either of these Offences, or that they are gone to any lewd House, may, if he find them there together, carry them before a Justice of Peace without any Warrant, and the Justice may bind them to the Good Behaviour. *Dalt. 214.*

Poph. 208.

If a Man is indicted for frequenting a Bawdy-house, it must appear that he did know it to be such a House; and it must expresse be alledg'd in the Indictment, that it is a Bawdy-house, and not that 'tis only suspected to be such.

The Defendant was indicted at the Sessions, for that she being of ill Fame was a Night-Walker, and that on such a Day, &c. she frequented a Bawdy-house; it happened that this Bawdy-house was not within the Jurisdiction of the Ju-

lices, and therefore as to that Part of the Indictment it was ill, and they would have made the other Part of it likewise to be ill; for though a common Night-Walker may be punishable, yet a Night-Walker is not, but because the Indictment was that she was of ill Fame, it shall be intended she was a common Night-Walker. *Latch 173. Willer's Case.*

Indictment against the Defendant, for that she was *Communis Lena*, ac male dispositas Personas in Domibus Lupanariis convenire & Scottationes & Fornicationes committere pro lucro proprio illicite procuravit, (a Common Bawd, and did unlawfully procure evil disposed Persons to meet together in Bawdy-houses to commit Whoredom and Fornication for her own Gain;) upon Not guilty pleaded, the Defendant was convicted; but it was revers'd upon a Writ of Error: For tho' an Indictment will lie for keeping a Bawdy-house, it will not lie for being *Communis Lena* (a Common Bawd,) nor for a Sollicitation of Chastity.

1 Salk. 382.
Queen and
Pierfon.

Indictment against Husband and Wife for keeping *Communem Domum Lenocinii*, Anglice, a common Bawdy-house: It was objected, that this could not be the *Keeping* of the Wife, no more then it could be the *Keeping* of a Servant; but it was held, That *Keeping* here signified Governing or Looking after, and not Renting; and the Wife may have a Share in the Governing of a disorderly House, as well as the Husband. *Mich. 10 Anna.*

1 Salk. 384.
Queen and
Williams.

An Indictment for keeping a Bawdy-house.

Suffex, to **T**HE Jurors for our Sovereign Lord the King sit, upon their Oath present, That T. P. of, &c. (on such a Day and Year), and at divers Times before and afterwards at Lewes in the County aforesaid frequents, holds and keeps in his House there common Bawdy-house Entertainments for Luxury and Fornication, and permits Men, and other suspected Persons, and not of good Behaviour or Fame, carnally to lie with Whores, to the great Detriment of the People of our Sovereign Lord the King dwelling near there, and to the bad Example of all other Offenders in such Case, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Behaviour.

T hose who are of ill Fame, or common Disturbers of the Peace; those who are accused, or guilty of any of the Offences herein after specified, may be required by one Justice to enter into a Recognizance with Sureties or without them, according to the Discretion of the Justice, to be of the good Behaviour; and upon Refusal may be committed.

The Offences, for which Persons may be bound to good Behaviour are,

- Ale-houses. { Those who tipple frequently in them, or in Taverns.
- Bastardy. { Those who are reputed to be the Fathers of Bastard Children, and likewise the Mother of such Child, if chargeable to the Parish; but it must be for her second Offence.
- Barretry. — Common Barretors.
- Bawdry. { Those who frequent Bawdy-houses, and the People who keep such Houses; likewise Whoremongers and Common Whores; for 'tis a temporal Offence, and against the Peace of the Kingdom.
- Cheators and Cozeners. { By Cards, Dice, false Letters, or any other Game or Games whatsoever.
- Conies. { Hunting, killing or stealing of them, either in Park or Warren.
- Drunkard. { Convicted by one Justice of Peace, or Head-Officer, or by Proof of one Witness upon Oath.
- Felons. { Acquitted of Felony, or convicted and pardoned, if the Person is of ill Fame; but this is discretionary.
- Fish. { Those who steal Fish, or destroy the Pond; the Person must be convicted.
- Gaming. { Such who frequent Gaming-houses, and those who game and have no Estates to support themselves.
- Hawks. { Convicted of taking Hawks or their Eggs out of the Grounds of another Person, may be bound for seven Years.
- Hue and Cry. — Raising it without a Cause.
- Hunters. — In Parks and Warrens.
- Idle Persons. { Living well, and having no Estates, Trades or Employments to support themselves. Those

Justice of
Peace.

Those who misbehave themselves before him,
or before any other Officer, in the Execu-
tion of Justice; those who speak con-
temptible Words of him, or abuse his
Warrants; those who delude his Autho-
rity by Complaint, without Prosecution.

Letters Scan-
dalous.

An Information was brought for writing
such a Letter, and the Publishing it was
proved, and the Offender fined 40 Marks;
'tis a Breach of the Peace.

Libels.

Those who contrive, procure or publish them,
whether true or false, either against Per-
sons living or dead, by Writings, Words,
Pictures, or any other Signs of Reproach.

Misbehavi-
our.

Of any Kind whatsoever; this must be left
to the Discretion of the Justice, it being a
general Word.

Murderers
and Man-
slayers.

Such who are likely to commit either of these
Offences.

Night-walk-
ers.

Those who are suspected to steal any Thing
in the Night, or to commit any Misde-
meanor against the Person and Goods of
another.

Peace.

Those who break it in any Manner whatso-
ever.

Poor.

Those who refuse to take poor Children
Apprentices; but now they are to pay
10 l.

Preachers.

Disturbing them in their Duty; but now
they must enter into a Recognizance with
two Sureties in 50 l. to appear at the next
Sessions; and upon Conviction there, must
forfeit 20 l.

Poison.

Mingling it with Corn, and giving it to
Poultry.

Quarrels.

Those who are guilty thereof, or breaking
the Peace.

Report or
Repute.

Those of a bad Report or Name.

Riot.

Those who continue in the very Act; but if
the Riot is over, then the Inquiry must be
by Jury.

Behaviour.

- Robbery. } Those who lie in wait, or attempt to rob another.
 Suspicion. — Persons suspected to lie in wait to rob, &c.

A Warrant for the Good Behaviour.

[To the Constable, &c. of H. in the County of *Suffex*.

Suffex, to wit, **W** Hereas I am credibly informed, That J. O. of, &c. is a Person of a lewd Life and Conversation, * and common Disturber of the Peace: These are therefore to command you forthwith to bring the aforesaid J. O. before me or some other Justice of Peace for this County, to answer unto such Matters as shall be objected against him by R. P. of, &c. and also that you require him the said J. O. to bring sufficient Sureties for his Good Behaviour until the next General Quarter-Sessions of the Peace, to be held, &c. And hereof fail not. Given under my Hand and Seal, &c.

* Here put in his Offence.

Moor's Rep. 606. Cal. 837. Upon a *Capias* to find Sureties *de bene gerendo*, the Officer may break open an House to take the Party, as well as upon *Capias Utlagatum*.

The Recognizance for the Good Behaviour.

This may be taken without Sureties, if the Justice think fit, for 'tis discretionary in him.

Suffex, to wit, **B**E it remembred, That on the third Day of January in the ninth Year, &c. J. O. of, &c. T. P. of, &c. and T. B. of, &c. came before us H. P. and R. B. Esqs. two of the Justices of our said Lord the King assigned to keep the Peace in the County aforesaid, and (in their proper Persons) acknowledged themselves to owe to our said Lord the King in Manner and Form following, that is to say, the aforesaid J. O. in 40 l. and the said T. P. and T. B. each in 20 l. of good and lawful Money of this Realm to be respectively levied of their several Goods and Chattels, Lands and Tenements, to the Use and Beboof of our said Lord the King, if the aforesaid J. O. be deficient, or make Default in the Performance of the Condition within written.

Taken and acknowledged the Day and Year above written before us,

H. P. R. B.

The

The Condition of this Recognizance is such, That if the above bounden J. O. shall personally appear at the next General Quarter-Sessions of the Peace, to be holden for, &c. to do and receive what shall be then and there injoin'd him by the Court, and in the mean Time that he be of Good Behaviour towards our said Sovereign Lord the King, and all other the People of this Kingdom; that then, &c.

If it be for the Peace, then say,

To answer unto such Matter as shall be objected against him by T. P. of, &c. and to do and receive what shall be then and there injoin'd by the Court; and in the mean Time, to keep the Peace of our Sovereign Lord the King, as well towards his Majesty, as all his Liege People; and especially towards the said T. P. and shall not do, or procure to be done, any bodily Hurt to him; that then, &c.

The Justice must certify the Recognizance at the next Sessions, or forfeits 10 *l.* and if the Party doth not appear, the Recognizance itself, with the Cause of the Forfeiture, must be certified in the *Exchequer*, that Process may be awarded against the Offender. *Dalt.* 190.

This, *Dalton* says, is very near of Kin to the Good Behaviour, and therefore I have placed it under this Head; Sureties of the Peace. for the Good Behaviour includeth the Peace.

It may be demanded by the Justice, of Persons guilty in any wise of breaking the Peace.

By	{	Affrays,	{	Fighting,	{	Suspected to break the Peace,
		Assaults,		Quarrelling,		Threatning to kill, &c.
		Battery,		Riot,		Wounding another.

But 'tis generally demanded of the Justice at the Instance of the Party; and before he grants it, he is to administer the following Oath to him or her who requires it.

The Oath.

YOU shall swear, That you are in Fear of your Life, or of some bodily Hurt to be done, or be procured to be done you by J. O. &c. and that you do not require the Peace of him for any Malice, Vexation or Revenge, but for the Causes aforesaid.

This being done, he may grant his Warrant to bring the Party before him,

The

The Warrant.

To the Constable of, &c. and to the Keeper of, &c.

Suffex, to wit, **W** Hereas T. P. of, &c. hath this present Day made Oath before me, That he is afraid that J. O. of, &c. will beat, wound, maim or kill him, and hath therefore pray'd Surety of the Peace against him: These are therefore to command you to cause the said J. O. to come before me or some other Justice of the Peace for this County, to find sufficient Security, as well for his Personal Appearance at the next General Quarter-Sessions of the Peace, to be holden for, &c. then and there to abide and do what shall be enjoined him by the said Court; as also in the mean Time to keep the Peace, and especially towards the said T. P. and if the said J. O. shall refuse so to do, that then you convey him to the Gaol aforesaid, and deliver him safely to the Keeper thereof: Commanding you also the aforesaid Keeper to receive the said J. O. into your Custody, and him there to keep until he shall find such Security as aforesaid.

If this Warrant is directed to a sworn Officer, he need not shew it to the Party, but he ought to tell him the Contents, and may break open Doors to take him. *Dalt.* 404.

Against whom grantable.	Feme Covert.	{ 'Tis grantable against her, but she is not to be bound, only the Sureties.
	Husband.	{ 'Tis grantable against his Wife, and upon his Request.
	Impotent.	— For he may procure another to do that.
	Infant.	— But he is not to be bound, only his Sureties.
	Lunatick.	— Having <i>Lucida intervalla</i> (lucid Intervals).
	Wife.	— Against her Husband.
Against whom not grantable.	Cinque-Ports.	{ Not by Justices, against any one living there, but by a Writ out of the <i>Chancery</i> , directed to the Constable of <i>Dover</i> Castle, and to the Lord Warden of the Ports.
	Blind.	—
	Deaf.	—
	Dumb.	—

Lord or Peer. { Not by the Justice, but by (a Writ of) *Supplicavit* out of *Chancery*, directed to the Sheriff.

Affrays. {
Armed. { Appearing in either.

What shall be a Forfeiture of the Recognizance.

Affault. —

Batteries —

Breach of the Peace. { Generally by doing any Thing which may tend toward it, or procuring such Act to be done.

Dog. { To take away a Dog of any Sort, or any Thing of Pleasure.

Imprisonment. { Without Warrant.

Threatning. { By Words which may stir up Blows, or threatening Witnesses, or to beat the Person at whose Suit he is bound. *Latch* 5.

Defence — Of his Person or Goods.

Goods. { Taking them wrongfully, if not from the Person himself.

Officer. { Striking any Man in Execution of his Office.

Threatning. — To beat the Party, but not before his Face.

Trespass. — In Corn or Grass.

Recognizance may be taken. { 1. By *Supplicavit* (the Writ aforesaid).
Or,
2. *Ex Officio* (by Virtue of his Office).

What shall not be a Forfeiture of it. See the Title postea.

If it is taken by *Supplicavit*, (which is not usual), then the Justice acts as a Minister, and must execute it in every Particular, and make a Return under his Hand and Seal.

If *ex Officio*, then he is Judge as well of the Sureties as in what Sum he binds them, how long they shall stand bound, and of other Circumstances; but it must be mentioned in the Condition, that 'tis to preserve the Peace, and that the Party shall appear at next Sessions; where the Justice must certify the Recognizance, that the Party may appear; if he neglects, he forfeits 10 l.

Style 322.
Cro. C. 446.
May take Money to lie in deposito.
Moyser and Gray.

When a Man is thus bound before the Justice of Peace, if he that complains shall afterwards make Oath above, That he is in Danger, and prayeth Surety of the Peace there, he shall have it; but then a *Supersedeas* must go to the Justice of Peace who took the Recognizance to discharge it below:

Moor 43. c. 133.

But

But if another Person, and not the Party himself, makes Oath above, That he believes the Party to be in Danger of his Life; then the other must give Sureties there, and both Recognizances shall stand.

If the Peace be required towards a particular Person, as well as generally towards all the King's People, then the Party may be continued by the Sessions for Half a Year or more; but if it be not at the Instance of a particular Man, then he may be discharged the next Sessions, if no Body appear against him.

An Indictment will not lie upon the Breach of this Recognizance, but a *Sci' Fa'*. Raym. 196.

Release there-
of.

If 'tis at the Suit of a particular Person, then he alone may release it before the Day of Appearance; but tho' this Release is certified with the Recognizance, as it ought to be; yet it doth not discharge the Appearance of the Party, because he is bound to the King, and likewise to appear, as well as to keep the Peace, which cannot be discharged by the Release of the Party; and therefore he ought to appear at the next Sessions.

If he break his Recognizance, 'tis a new Offence; and he may be indicted for that.

The Release to be written under the Condition of the Recognizance.

MEmorand', *That the aforesaid T. P. came before me R. B. Esq; on the 9th Day of this Instant October, and did, as much as in him lay, freely release the said Security of the Peace formerly desired by him, as above-mentioned, against the above-bounden J. O. In Witness whereof, I have hereunto set my Hand and Seal the said Ninth of October, &c.*

But without such a Release it } By the Death of the King.
may be dis- } By the Death of the principal Conuzor;
charged, } but the Recognizance must be certi-
fied.

But the Death of the Sureties will not discharge it; for if forfeited, the Executors are liable.

Supplicavit and
Superfedeas.
21 Jac. c. 8.
2 Cro. 3. 56.
6th.
Godbolt.
Placit. 451.

I shall say little of this Writ of *Supplicavit*, because 'tis not much in Use. 'Tis true, 'tis a judicial Writ granted out of B. R. but not without Special Cause upon Oath, and by Motion in open Court; for 'tis in Effect an Accusation of the Justices below, as if the Party could have no Relief of them,

them, and therefore was forced to apply himself to these above.

'Tis usually directed to one or more Justices, and sometimes to them and the Sheriff; but the Justice to whom 'tis first delivered ought to execute it, and to make the Return.

The Form of the Writ.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To his beloved and trusty H. P. Esq; and his Companions, our Justices assigned to keep our Peace in the County of Sussex, Greeting: T. P. hath humbly intreated us, That whereas he is grievously and manifestly threaten'd by J. O. of Life, and maiming of his Limbs, as also of the Burning of his Houses, we are willing in this Particular to provide for the Security of him the said T. we yielding to his Supplication aforesaid command you, firmly injoining, That you cause the said J. O. to come before you, to find sufficient Bail, who will bail him under a certain Penalty to be reasonably imposed on them by you, for which you will answer to us; and if he shall refuse to do this before you, then do you commit him to our next Gaol, to be safely kept in the same, until he is willing to do this freely, and when you shall have thus taken this Security, then do you distinctly and openly, without Delay, certify us thereof before us, under your or any of your Seals, or under your Seal, remitting to us this Writ. Witness, &c.

By the Clause in this Writ, *pro qua nobis respondere volueritis*, &c. (for which you will answer to us), 'tis discretionary in the Justice to take what Security he shall think to be sufficient, but sometimes the Sum is mentioned in the Body of the Writ, and then he is bound up to take that Security, and no other.

The Justice, to whom this Writ is delivered, may forthwith issue out his Warrant against the Party: The Form of which is,

The

The Form of a Warrant upon a Supplicavit.

Suffex, to **H.** P. Esq; one of the Justices of the Peace for
writ, **H.** the County aforesaid, to the Sheriff of the
said County, and to the High Constable of the Rape of L. and
to the Petty Constables of, &c. and to the other Constables with-
in the said Hundred of, &c.

Whereas I have received a Writ from the King, reciting
That T. P. hath pray'd his Majesty, that he the said T. be-
ing in Danger of his Life, or of some other bodily Hurt, from
J. O. His said Majesty would provide for the Security of him,
the said T. P. And thereupon His said Majesty, by the afore-
said Writ, hath commanded me to cause the said J. O. to be
brought before me, to find Security for the Peace, or to com-
mit him to Gaol, if he shall refuse so to do, as by the said
Writ, Relation being thereunto had, it doth and may more at
large appear: Therefore I do hereby command you, and ev-
ery of you, immediately upon Receipt hereof to apprehend the said
J. O. and cause him to come before me, to find sufficient
Sureties for the Peace, to be from henceforth kept by him,
as well towards his said Majesty, as all his People, and
more especially towards the said T. P. And if the said J. O.
shall refuse so to do, that then you convey him to the common
Gaol for the said County in H. there to remain until he
shall willingly do the same. Given under my Hand and
Seal, &c.

The Party must be brought before no other Justice but him
who grants this Warrant; neither can any other discharge
him by a *Supersedeas*.

When he is brought before the Justice, and he hath ta-
ken Security, as directed by the Writ, then he may return it
thus, written on the Back thereof:

*The Execution of this Writ appears in a certain Schedule to
this Writ annexed.*

Then he may file the Return to the Writ thus, in a Piece
of Parchment by itself.

I H P. Esq; one of the Justices assigned to keep the Peace
in the County of Suffex, do humbly certify to our Sovereign Lord
the King, That by Virtue of the Writ within written first de-
liver'd to me by the within named T. P. I did cause the said
J. O. in the said Writ named, personally to appear before me

at, &c. on the 3d Day of January last past; and then and there I also caused the said J. O. to find sufficient Security of the Peace according to the Form and Effect of the said Writ. In Witness whereof I have set my Hand and Seal to this Schedule the 21st Day of January in the Year of our Lord 1736.

The Justice need not return the Recognizance, which is the Security by him taken, as aforesaid, without a *Certiorari* for that Purpose, the Form whereof with the Return is as follows:

George the Second, &c. (as in the Writ of Supplicavit),
Greeting: We being willing for certain Causes to be certified of the Tenor of a certain Security of the Peace lately by Duty of your Office taken before the said H. P. and his Companions, our said Justices assigned to keep our Peace in the said County of Sussex, of J. O. for that, that he shall not do nor procure to be done any Damage or Mischief to T. P. which said Security of the Peace remaineth with you, as it is said, we command you, that distinctly and openly, without Delay, you certify us thereof in our Chancery, under the Seals of you or one of you, remitting to us this Writ. Witness, &c.

I H. P. Esq; &c. (as in the last Return, to the Words) in the County of Sussex, by Virtue of the Writ within written, do humbly certify to our Sovereign Lord the King the Tenor of the Security of the Peace, whereof Mention is within made, as in the Schedule to this Writ annexed. Dated, &c. as above.

Then write the Recognizance *verbatim*, and file it to the *Certiorari*, and so send it up together.

When this is done the Justice may grant a *Supersedeas*, reciting the *Supplicavit*, or without it.

The Form of the *Supersedeas*.

To the Sheriffs, Bailiffs, Constables, and other of his Majesty's Officers within the County of *Sussex*, and to every of them.

Sussex, to
quit,
Whereas J. O. of, &c. hath personally come before me T. P. Esq; one of his Majesty's Justices of the Peace for the said County, and hath found sufficient

Behaviour. Bigamy or Polygamy.

* The best Way is to name the Parties, and in what Sums bound; but the Superfedeas is good without it.

*sufficient Sureties * well and truly to keep the Peace towards His said Majesty, and all his People, but more especially towards T. P. of, &c. and also that he shall personally appear before the Justices of the Peace at their next General Quarter-Sessions to be held for, &c. Therefore on the Behalf of his said Majesty, I command you, and every of you, to forbear to arrest, imprison, or otherwise to molest the said J. O. for or by Reason of the said Occasion, and no other; and if he shall be already taken or imprison'd for the same, that then you cause him to be forthwith discharged. Given under my Hand and Seal, &c.*

The Party may also move the Court of *B. R.* for a *Superfedeas*, but this must be upon a *Supplicavit*, and not where the Justice proceeds *ex Officio*; because by the Statute of 21 Jac. c. 8. it must appear to the Court, that Process of the Peace, or Good Behaviour, is required against the Offender in that Court by the Party grieved, out of which the *Superfedeas* is desired.

A *Mittimus* for Breach of the Peace.

To the Keeper, &c.

Middlesex, to **I** Send you herewithal the Body of J. O. of, &c. whom I charge, and require you to take into your Custody, for several Misdemeanors committed by him against the Peace; and you are hereby required to keep him the said J. O. safely in the common Gaol, until he shall procure two sufficient Persons to be bound with him in a Recognizance to the King's Majesty; that is to say, each of the said Sureties in the Sum of 10 l. and himself in 20 l. to appear at the next General Quarter-Sessions of the Peace to be holden, &c. and in the mean Time to be of the Good Behaviour. And hereof said not. Given under my Hand and Seal, &c.

Bigamy or Polygamy.

1 Jac. c. 11.

THIS was prohibited by the Statute of 1 Jac. by which 'tis made Felony to marry a second Husband or Wife, the first being living.

3 Inst. c. 27.

My Lord Coke, in his Exposition upon this Statute, hath made several Exceptions out of it.

3 Inst. 88.

1. That this Law doth not extend to a Person whose Husband or Wife is beyond Sea, or to such who shall be absent from

from one another in *England*, for the Space of seven Years; with this Difference, That if the Abode be beyond Sea, then though either of them have Notice that the other is living, such Notice is not material: But if in *England*, 'tis otherwise; for in such Case the Party is not exempted from the Penalty of the Statute.

2. That it doth not extend to Persons divorced à *Mensa* & *Tbôro* (from Bed and Board). 3 Inst. 89.

3. Nor to such whose former Marriage is by any Sentence in the Ecclesiastical Court declared void. 3 Inst. 89.

And therefore where a Man was divorced *Causa Adulterii* (by Reason of Adultery), and married another Wife, the first being then alive, this was held within the *Proviso* of that Statute; for the first Marriage is sever'd by the Divorce: But if it had been *Causa Sævitiæ* (by Reason of Cruelty), then he could not have married again; because that is only a Temporal Separation till the Anger is past. March 101. Vid. Dame Powell contra Weeks. Noy's Rep. 108. Porter's Case, Cro. Car. 461. Godolphin's Ab. Divorce. Sid. 171.

4. Not to those who have been married within the Age of Consent, viz. the Man under fourteen; and the Wife under twelve, who afterwards disagree to that Marriage.

It has been likewise held, That if a Man marries a Woman beyond Sea, and is living; and his Wife marrieth another Husband in *England*, this is not within the Statute; because the first Marriage cannot be tried here.

The Offenders have Clergy.

The Trial and Execution to be in the County where they are apprehended, &c. 3 Inst. 83.

An Indictment for Bigamy.

THE Jurors for our Sovereign Lord the King upon their Oath present, That J. O. late of, on the sixteenth Day of December in the fifth Year, &c. of Lewes in the County aforesaid, married one H. P. Spinster, and that the said J. O. afterwards, to wit, on the twelfth day of June in the sixth Year, &c. at C. in the said County, lawfully married one E. R. Spinster, the said H. P. his former Wife, then and there being alive, and in full Life, to wit, of Lewes aforesaid in the said County, against the Peace of the said Sovereign Lord the now King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Blacks. See Felony.

Willeys. See Fuel.

Blasphemy.

9 & 10 Will. 3.
cap. 32. sect. 1.

ANY Person bred in, or professing the Christian Religion, and who shall by Writing, Printing, Teaching, or advised Speaking, deny any one of the Persons of the Trinity; or assert, That there are more Gods than one; or deny the Christian Religion to be true, or the Holy Scriptures to be of Divine Authority; and be convicted thereof by Indictment or Information at *Westminster* by two Witnesses, or at the Assizes, he shall be disabled to have any Office, and shall not enjoy that Office which he hath, but the same is made void.

If convicted a second Time, he shall be disabled to sue in any Court, or to be a Guardian, or Executor, or Administrator, and be incapable of any Legacy or Gift, or of any Office, and shall be committed for three Years without Bail.

9 & 10 W. 3.
c. 32. sect. 2. 3.

Conviction must be by Oath of two credible Witnesses; the Information for *Words spoken* must be by Oath before a Justice of Peace within four Days after spoken: And the Prosecution of such Offence must be within three Months after the Information. But if the convicted Person, for the first Offence, shall, within four Months after his Conviction, acknowledge and renounce the same in that Court where he was convicted, he shall be discharged from the said Penalties. See the Stat. 7 *Annæ*, c. 14.

Bone-Lace.

14 Car. 2. c. 13.
8 & 9 Will. 3.
c. 25. 11 Will. 3.
c. 3. sect. 15.
13 & 14 Car.
2. c. 13. is re-
pealed as far
as relates to
Lace made in
the Spanish
Low Countries
or any other
Place not with-
in the Dominions of the French King, by 5 Ann. c. 17. sect. 1.

THIS being formerly imported from Foreign Parts, but the *English* having gotten great Skill and Dexterity in making it; therefore it was thought fit to prohibit the Importation of *Foreign Bone-Lace, Cut-Lace, Loom-Lace, Needle-work and Point*; and not only the Importer, but he that sells, barbers, or offers it, or causes it to be offer'd to Sale or Barter, or who shall knowingly keep it for Sale, or for the Use of any Importer or Dealer in the said Commodities, forfeits 20 *l.* per Yard, together with all the said Goods.

The Importation, Selling, &c. the said Goods, is declared to be a *Common Nuisance*, and the Goods may be seized, and the Offender prosecuted by any Person.

And 'tis lawful for any Man, with a Warrant from a Justice, and in the Presence of a Constable, &c. in the Day-time, to enter the House, Shop, &c. of any Person dealing in Lace (and not otherwise) to search for, and seize the said prohibited Goods; and, in Case of Resistance, to break open the same, and Chests and Trunks, &c. but the Person complaining must make Oath before the Justice, that he hath Reason to suspect or believe the Goods are there.

These Goods, when seized, must be carried to the next Custom-House; and if they shall be condemned, must be sold by Inch of Candle, upon Notice in Writing fixed on the Custom-House ten Days before the Sale; and shall not be delivered to the Buyer, until he give Bond to the King in double the Value, to export them within six Months after the Date of the Bond.

But if such Bone-Lace, &c. is carried to a Custom-House as *Foreign*, and the Seizor, upon farther Examination, shall believe it to be *English*, then he must give publick Notice of the said Seizure, by fixing a Paper on the Custom-House Door, or any other publick Place, and what Quantity and Quality of Goods were seized; and if no Person after ten Days will prosecute for the same as *Foreign*, then they shall be delivered back to the Proprietor, he (or some known Person in his Behalf) making Oath before a Justice, that the Goods, to the best of his Knowledge and Belief, are *English* made; and this must be certified by the Justice to the next Sessions.

If any Question should be made, Whether the Bone-Lace, &c. be made in *England* or beyond Sea, the Proof that it was made *here*, shall be upon the Importer, Retailer, &c.

The Forfeitures * over and above any Penalties by any former Act, are to be recovered in the Courts of *Westminster* by Action of Debt, &c. and Costs of Suit; one Moiety to the King, the other to the Prosecutor. See the Act.

* By 14 Car. 2. 'tis sol. and Forfeiture of Goods. See the Stat. 4 G. 1. c. 6. Tit. Hawk.

Books.

BY Stat. 7 *Anna*, one Justice may grant a Warrant for any Book taken out of any Parochial Library, which if found shall immediately be restored again, or the Parson or any other may bring Trover against the Detainer. This Act not to extend to the publick Library at *Ryegate* in *Surrey*. ~ *Anna*, c. 14. sect. 10.

Bows. See Dogs.

Brandy. See Ale-house.
K 2

Brass

Brass and Pewter.

19 H. 7. c. 6.

* 2; H. 8. c. 9

TH E S E Metals are prohibited by the Stat. of 19 H. 7. to be exchanged or sold but in a Market or Fair, or in the Dwelling-houses of a Pewterer or Brasier, except desired by the Buyers of such Wares, on Pain of 10 l. for each Offence, to the * King and the Prosecutor; to be recovered in any Court of Record, &c.

The Justices in *Michaelmas* Sessions may appoint two Searchers of Brass and Pewter for the County; and the Head Officer may do the like in every Corporation.

Wead. See **Weights and Measures.**

Breaking open Doors. See **Force.**

Brewers.

* Gap. 4.

BY the Statute of * 23 H. 8. a Brewer is prohibited to be a Cooper, and if he maketh a Vessel not marked by a Cooper, and puts Beer therein, he forfeits three Shillings and four Pence. They must sell their Beer and Ale at such Rates as shall be thought fit by the Justices of the Peace, in Pain to forfeit for every Barrel six Shillings; for every Kilderkin three Shillings and four Pence; a Firkin, two Shillings; and for every greater Vessel, ten Shillings; and lesser, twelve Pence: The Forfeitures to be divided between the King and Prosecutor.

But several later Statutes have been made, which relate to Brewers; all which may be reduced under these Heads:

1. What Quantity of Beer or Ale their Vessels shall contain.
2. What Duty is given to the King upon each Vessel.
3. What is to be done in order to make Entries.
4. The Punishment of Mis-entries, or short Entries.
5. The Punishment of Frauds in Brewers.
6. Matters relating to them and the Gaugers.

1. Ale-Barrel must contain	32	} Gallons.
Kilderkin	16	
Firkin	8	

* Beer Barrel must contain	36	} Gallons.
Kilderkin	18	
Firkin	9	

* W. & M.

2 *Anno 12 Car.* the Parliament gave the King, for every Barrel of Ale or Beer above the Price of six Shillings, the Duty of one Shilling and three Pence; and if under that Value, then three Pence and no more, during Life.

Duties to the King. 12 Car. 2. cap. 23. Nota; this Statute is continued for the Life

of his present Majesty by 1 Geo. 2. Stat. 1. c. 1.

The next Year the Court of Wards and Liveries was taken away, and in Lieu thereof, the Parliament gave the King, his Heirs and Successors, the like Duty.

But the first Duty being determined by the Death of that King, the Parliament gave his Brother and Successor, King James, that Duty during Life.

Afterwards 1 *Will. & Mar.* an Additional Duty of nine Pence for every Barrel above the Value of six Shillings and eight Pence, and under that Value, three Pence, was given to the King, and to continue for three Years.

Anno 2 Will. & Mar. the Duty which was given to the former Kings, and which was determin'd by the Death of the one, and the Abdication of the other, was given to *Will. & Mar.* during their Lives, and the Life of the longest Liver; and in the same Year, those Duties were doubled for one Year.

Likewise in that Year a farther Imposition was laid, of one Shilling and six Pence on every Barrel of Ale above six Shillings Value; and if under, six Pence, and no more, and this was to continue for four Years, which expired in the Year 1694.

But in the Year 1692, which was in the fourth Year of *4 W. & M. c. 3.* *Will. & Mar.* the Additional Duty of nine Pence *per Barrel* was given for ninety-nine Years, to be a Fund for a *5 W. & M. c. 20. sect. 10.* Million of Money, &c.

3. Every common Brewer ought to make his Entry *Entries.* once in a Week, and every Ale-house-keeper, Inn-keeper *12 Car. 2. c. 23.* and Victualler, once in a Month: This must be of Li- quors which they brew or retail, and the Entry must be at the Excise-Office; and in Default thereof, a common Brewer and Inn-keeper forfeits five Pounds, and a Retailer twenty Shillings.

If they pay not the Duty within a Week, and Retailers *12 Car. 2. c. 24.* within a Month, they must pay double. *12 Car. 2. c. 23.* Forfeits 10 l. and Retailer *40 s. per Month.*

Offenders in London against this Law, may be tried by the Chief Commissioners, or Commissioners of Appeal, and in all other Places by two Justices, or more, near the Place; and if they neglect or refuse by the Space of fourteen Days after Complaint, then by the Sub-Commissioners; But in this last Case an Appeal lies to the Sessions, whose Order is final.

12 Car. 2. c.

23. sect. 19, 20.

Justices or Sub-Commissioners may give Judgment upon Proof by one Witness upon Oath, or Confession of the Party, and may issue out a Warrant to levy the Forfeitures by Distress, to be sold within fourteen Days, and for Want thereof may commit the Offender; but they may mitigate the Forfeitures, so it be not less than double the Value of the Duty, besides Costs and Charges.

A Warrant for not making an Entry of the Duty

To the Constable, &c.

Suffex, to **W** Hereas Complaint hath been made unto us wit, whose Names are under-written, being Justices of the Peace for the County aforesaid, That T. P. of, &c. in the said County, common Brewer, hath not made a due Entry at the Office of Excise, of all Liquors by him brewed, according to the Form of the Statute in that Case made and provided; which Complaint we have examined, and find the same to be true: These are therefore to require you to levy the Sum of * 10 l. upon the Goods and Chattels of the said T. P. and to sell the same, if not redeemed within fourteen Days next ensuing, and that you pay the Money arising by such Sale, to such Person or Persons, as by the said Statute is limited and † directed, rendering the Overplus (if any) unto the said T. P. and if you cannot find sufficient Distress, that then you forthwith certify us thereof, that we may proceed further concerning the Premises: And thereof fail not. Given under our Hands and Seals, &c.

* It may be mitigated to any Sum above double the Value of the Duty, besides Costs, &c.

† Viz. three Fourths to the King, the other to the Informer.

1 W. & M. Stat. 1. c. 24. sect. 3.

7 Will. 3. c. 30. sect. 24.

The Justices of Peace, upon any Information for an Offence against the Laws of Excise, may summon any Person, other than the Party accused, to appear before them to give Evidence; and the Person making Default forfeits 10 l. to be recovered by Action of Debt, &c. in the Courts of Westminster; one Moiety to the King, the other to the Prosecutor.

The Summons to give Evidence.

Suffex, to **T** O T. E. of, &c. in the County of, &c. Whereas we are informed, That T. P. of, &c. hath, on the sixth Day of November last past, brewed and sold Ale and Beer without making a due Entry thereof, according to the Statute in that Case made and provided: These are therefore to require you to appear before us being Justices of the Peace

for the County aforesaid, on the tenth Day of this instant Month, at, &c. to testify your Knowledge concerning the Premises: And hereof fail not at your Perils. Given under our Hands and Seals, &c.

By the Statute 12 Car. 2. c. 13. §. 10. a Brewer is to have Allowance. the Allowance of Leakage, viz. Three Barrels in Twenty-three of Beer, and two Barrels in Twenty-two of Ale, which is now by a subsequent Statute reduced to two and Half within the Weekly Bills of Mortality; but if he makes a false Entry, and is convicted before two Commissioners, he forfeits this Allowance for six Months. 7 & 8 Will.

But such who come to make an Entry, and pay the Duty, and tender the same, tho' not actually paid; yet if they can prove it by one Witness, shall not be liable to any Forfeiture.

Information shall not be brought for any Mis-entry, but within three Months after the Offence committed, and Notice thereof given to the Defendant in Writing within a Week after the Information entred.

By altering, enlarging or fitting up, without giving Notice to the next Office of Excise, and using for making Beer, &c.	} any {	Back, Cooler, Copper, Fat, Tun.	Forfeiture is 50 l. for every Tun or Fat, one Third to the King, another to the Poor, &c. another to the Informer, &c.	Punishment of Frauds, &c. 15 Car. 2. c. 11. But by Statute 8 & 9 Will. the Forfeiture is 200 l. for each Vessel.
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Occupier of an House, where any Brewer keeps a private Store-house for laying Liquors in Casks, forfeits 50 l. and the Liquor concealed may be seized, and delivered to the Overseer of the Poor to be distributed amongst them.

By converting small Beer into strong, after an Account taken by the Gauger, and delivering it out without giving Notice to the Gauger, or by concealing any Beer from Time to Time, forfeits 20 s. per Barrel. 15 Car. 2. c. 11. Sect. 12.

By suffering another Brewer to use his Brew-house after he hath compounded for the Duty, without giving Notice thereof, and paying the Excise, the Brewer, and the Person for whom 'tis brewed, forfeits 5 l. per Barrel to the King and Informer. Sect. 14.

By bribing a Gauger, or by taking any Bribe, the Forfeiture is 10 l. This Offence must be proved before two Justices, and by two Witnesses. Sect. 16.

By denying the Gauger to enter, and selling after he is forbid by the Gauger, without paying the Duty, the Forfeiture is 10 l.

By mixing, concealing, or conveying Worts contrary to the Act 15 Car. 2. forfeits 20 l. per Barrel.

1 W. & M.
7 & 8 Will.
& M

Officer.

7 W. 3. c. 30.

† Keeping a
Pipe under
Ground, for-
feits 100 l. for
every
Offence 100 l.
per Stat. 8 &
9 W. 3. c. 19.
f. 4.

Distillers.

7 W. 3. c. 30.
f. 27.

8 W. 3. c. 19.
f. 6.

Officer suspecting any Fraud, may in the Day-time, and in Presence of a Constable, break open a Door of any Person to follow the † Pipe: He who opposes him forfeits 20 l. to be recovered as any Forfeiture by any Statute of Excise, or by Action of Debt, &c. one Moiety to the King, the other to him who shall discover and sue for the same.

But by the Statute of 8 & 9 Will. the Person opposing the Gauger forfeits 50 l. to be recovered by Action of Debt, &c. one Moiety to the King, and the other to the Informer. §. 6.

An Officer in the Day-time, as aforesaid, may break up the Ground in any Distilling-house, or the Ground near adjoining, or any Wall, Partition, or other Place, to search for a Pipe, Stop-cock, or other private Conveyance, and if he finds any such, he may break up the Ground, House or Wall, or other Partition, or Place, through or into which such Pipe shall lead, and may break or cut the Pipe.

But if upon Search no such Pipe can be found, or other private Conveyance, then such Officer shall make good the Ground, House and Wall, &c. and make such Satisfaction to the Owner, as two next Justices, *Quorum unus*, shall adjudge; or the Party may bring his Action.

Opposing the Officer, the Forfeiture is 100 l.

If the Gauger or Officer shall suspect any private Still to be set up in any House, he may make Affidavit of it before a Justice of Peace; in which Affidavit he must set forth the Grounds of his Knowledge or Suspicion; and then he may, in the Day-time as aforesaid, and by a Warrant from that Justice before whom he made Affidavit, break open the Door, or any Part of the House, and enter and seize the Stills, and detain them in that House, or elsewhere; and if not claimed within twenty Days after the Seizure, they may be sold; one Moiety of the Money arising by such Sale shall be to the King, the other to him who shall discover and seize the same.

But if claimed within twenty Days, then the Person claiming it shall, for every Warehouse in which such Still shall be found, and for every Still also, forfeit 200 l.

But if no Still be found, then the Officer must make good the House, or pay such a Satisfaction as two Justices, as aforesaid, shall adjudge.

8 & 9 W. 3.
c. 19. f. 2.

The Brewer must tell the Gauger how much Strong Beer and Ale, and how much Small, he intends to make before the Guile is cleansed or removed: If he refuses, the Gauger may return the whole Strong, and the Brewer forfeits for every Barrel 20 s. And if he increases his Guile after he hath told the Gauger how much he intends to brew, he forfeits for every Barrel increased 5 l. and the Servant assisting

ing him 20 s. and in Default of Payment, three Months Imprisonment.

If after carrying out the Drink, he mix Small Beer with the Strong on the Dray, or elsewhere, forfeits 5 l. for every such Offence; *per Stat. 7 & 8 Will.*

If a Brewer, Inn-keeper, or Victualler, without giving Notice to the Gauger, shall cleanse or carry out of a Brewhouse any Part of the Wort before the Whole is brew'd, and put in Tuns, Backs, or Coolers, and until the Gauger shall or might take an Account of it, he forfeits 40 s. *per Barrel.*

Delivering Wash to Distillers, without giving Notice to the Gauger, forfeits 20 s. *per Barrel.*

A Gauger may enter into an House or Brewhouse in the Day-time, or at Night, with a Constable, and stay there whilst the Brewing is there, and may take an Account of the Worts, and see the Strong and small Beer cleansed, and gauge the Tun, or take an Account of the Malt from which the Worts are made; and if refused or not suffered by the Brewer, he forfeits for every Offence 20 l. and the Informer is not to prove that the Brewer carried out any Wort before he paid the Duty. *7 & 8 Will.*

He may taste the Drink upon the Dray, and enter the Cellar of any Inn-keeper or Victualler, to taste it; and if they will not permit him, they forfeit for each Offence 5 l.

He must within three Days after every Week leave 3 & 9 W, with the Brewer, or his Servant, a true Copy under his Hand, of the Charge made upon the Brewer that Week: If he do not, or shall charge the Brewer more than is in that written Copy, he shall forfeit 10 l. to be recovered by any Person who will sue for the same in the Courts of *Westminster.*

Vide 6 Geo. 1. c. 21. which appoints all Forfeitures, or Proceedings upon the Excise Acts, &c. to be finally determined by the Commissioners of Excise within their Limits, or if out of them, by two Justices residing near the Place, &c. such Judgments not liable to Appeal or *Certiorari.* Vide 1 Geo. 2. c. 16. §. 3, which gives Appeal to Quarter-Sessions in case of Offences relating to the Duties on Malt, Hides, Skins, Vellum and Parchment.

A Warrant against a Brewer who maketh a false Entry, by which the Allowance of Leakage is taken away for six Months.

To the Constable of, &c.

12 Car. 2. 23.

Suffex, to **W** Hereas N. V. of, &c. Common Brewer, bath wit, *this present Day been duly convicted before us, that he wilfully made a false Entry of three Barrels of, &c. by him lately brewed, contrary to the Form of the Statute in that Case made and provided: And whereas the Allowance appointed to be made for Waste by Filling and Leakage, at three Barrels upon every twenty-three Barrels of Beer: Which Allowance, in Case of a false Entry, and Conviction thereof as aforesaid, shall be forfeited for six Months: We do therefore adjudge, that the said N. V. for this his Offence, shall forfeit and lose the said Allowances for the Space of six Months next ensuing. Given, &c.*

* Per 1 V. & M. c. 24. f. 5.

*Tis two Barrels and an Half within the Weekly Bills. Two Justices in the

County, and two Commissioners within the Limits of the Chief Office in London. Proved by one Witness upon Oath. 15 Car. 2. c. 11.

A Warrant to levy Ten Pounds, against such who bribe a Gauger, &c.

To the Constable, &c.

Suffex, to **W** Hereas it hath been duly proved before us, wit, *H. P. and R. B. two of his Majesty's Justices of the Peace for the County aforesaid, That T. P. of, &c. common Brewer, did by Money, Fees, and other Rewards, bribe and corrupt W. B. Gauger, to make a false Return unto the Office of Excise, of Beer and Ale exciseable, and made and brewed within his Division; by Reason whereof he hath forfeited the Sum of 10 l. for the said Offence: These are therefore to charge and command you, &c. to levy the aforesaid Sum of 10 l. upon the Goods and Chattels of the said T. P. by Distress and Sale thereof, rendring to him the Overplus, if any shall happen to be. Given, &c.*

The Offender may be committed if no Distress can be taken. The like Warrant, *Mittimus* and Forfeiture, for the Gauger or Officer who receives a Bribe relating to the Excise:

Excise : But now per Stat. 1 W. & M. 'tis a Forfeiture of Office.

The *Mittimus*.

To the Constable, &c. and to the Keeper, &c.

Suffex, to wit, **W** Hereas the Constable of, &c. was by a War-
rant under our Hands and Seals, required to
levy the Sum of 10 l. upon the Goods and Chattels of T. P. by
him forfeited, for, &c. And whereas we are credibly informed
by the said Constable, that the said T. P. hath not sufficient Dis-
tress whereon the said Sum can or may be levied: These are
therefore to require you, &c. to take the said T. P. and to con-
vey him to the common Gaol aforesaid, and there to deliver him
to the Keeper thereof: Requiring you also the aforesaid Keeper to
take the said T. P. into your Custody, and him there to keep until
he pay the said Sum of 10 l. Given under our Hands, &c.

Two Justices.
1 Lutw. 499.

An Indictment against a Brewer, for brew-
ing Strong Beer, without giving Notice,
to the Gauger.

Suffex, to wit, **T** HE Jurors for our Sovereign Lord the King
upon their Oath present, That J. O. late of
Lewes in the said County, Brewer, on the twelfth Day of Fe-
bruary in the Fifth Year, &c. at Lewes aforesaid in the said
County, privately and secretly brewed twenty Barrels of the
best Strong Beer, and that afterwards, that is to say, on the
said twelfth Day of February in the Fifth Year aforesaid,
with Force and Arms, &c. at Lewes aforesaid in the said
County, uttered and sold to divers Persons unknown the said
twenty Barrels of the best Strong Beer privately and secretly,
and without any Notice thereof given to any Gauger, or other
Officer of our said Sovereign Lord the now King, of the Excise,
with Intent to defraud our said Sovereign Lord the now King
of his Duty of Excise of the said twenty Barrels of the best
Strong Beer, to the great Deceit of our said Sovereign Lord the
now King, and against the Peace of our said Lord the King,
his Crown and Dignity.

Bridges.

Bridges.

THE Statutes which concern the Building, Repairing, &c. Publick Bridges, are,

9 H. 3. c. 15.

1. *Magna Charta*, by which it is enacted, That neither any Town or Freeman shall be distrain'd to make Bridges or Banks, but such who antiently and of Right have been accustomed to do it: This my Lord *Coke* says was declarative of the Common Law.

3 Inst. 29.

22 H. 8. c. 5.

2. The Statute of *H. 8.* by which four Justices *Quorum unus* may in their Sessions inquire, hear and determine the Annoyances of Bridges, and of Highways adjoining within 300 Feet; and may charge those who ought to repair the same, by sending Process, and imposing such Penalties as they shall think fit, if the Persons are known.

And if it cannot be known what Persons or Lands ought to repair, it shall be done by the County, Riding or Corporation, within which the Bridge or Highway are situate; and if within two Precincts, then by the Inhabitants of each, by paying their respective Parts.

An Information was exhibited against two Men in the County of *Huntingdon*, in the Name of all the County, that they *debent & solent* (ought and were used) to repair a Bridge, and thereupon they were at Issue; and at the Trial, no Evidence was produced to maintain the Information, because by the Statute of *H. 8.* the County must repair; and if any particular Person ought to do it, the County must shew it, to discharge themselves; but there was no Evidence given that *Huntingdon* used to repair the Whole, for Part of the Bridge was in *Bedfordshire*, and they *used* to repair Half. *Popham* 192.

2 Lev. 312.
King against
The Inhabitants of the
County of
Nottingham.

Information against the Inhabitants of the County of *Nottingham*, for not repairing a Bridge on the *Trent*, between *Newark* and *Mansfield*, which Time out of Mind had been repaired by them; two of the Inhabitants in the Name of themselves and the Rest plead, That the Lord *Limington* and other Persons, Owners of Lands called *Bridgeland*, ought to repair, &c. *Ratione Tenure* (by Reason of the Tenure), and traverse that the Inhabitants Time out of Mind have or ought to repair. The Attorney General replied, that the Inhabitants ought to repair, and traversed that the Lord *Limington* ought; upon which they were at Issue, and upon a Trial at Bar by a *Middlesex Jury*, it was found against the Inhabitants.

Nota; They did not plead Not guilty, but that another ought to repair; and this was held good, *per Hale, Ch. Justice*.

Before

Before I proceed to the Manner of Taxation, 'tis to be consider'd who are liable to be taxed; and of those, there are two Sorts,

1. By Tenure of their Land.
2. By Toll-taking.

1. By Tenure: And as to that, 'tis generally true, that a particular Person shall not be bound by Prescription, to repair, &c. if it be not in Respect of the Tenure of his Land, or of some Profit; for if a Man and his Ancestors have Time out of Mind repair'd, such Usage shall conclude him and his Heirs, because it shall be supposed to be done at first by Reason of his Tenure in the Lands; so 'tis likewise of a Corporation, Spiritual or Temporal.

The Defendant was indicted at the Sessions for not repairing the East Part *communis pontis pedalis continen' dimidium pontis in communi semita* (of a common Foot (Measure) Bridge containing the Half of the said Bridge in the common Foot-Path). After Judgment against the Defendant, and a Writ of Error brought, it was objected that the *Sessions* had no Jurisdiction in Cases of *Bridges*, but only of such which are in the *Highway*, and that it ought to be set forth in the Indictment, how many Foot in Length, and how many in Breadth the Defendant is to repair. 'Tis true, there may be *communis semita* (a common Foot-path) not in the Highway, but still the not repairing it may be a *Nusance*, and in such Cases the Justices have a Power by the Stat. 1 Ed. 3. and not by the Stat. 22 H. 8. Of this Matter the Court doubted, but they held *Dimidium Pontis* (Half of the Bridge) was certain enough, and reversed the Judgment, because it ought to be *Pons pedestris* (a Foot Bridge) and not *pedalis* (a Foot in Measure), for that signified a Bridge a Foot in Length.

Indictment against the Defendant for not repairing *quendam communem pontem* (a certain common Bridge) situate in *quadam communi semita pedestri* (in a certain common Foot-way) leading from such a Place to such a Place, which the Defendant is bound to repair *Ratione Tenuræ* (by Reason of his Tenure), and which was in great Decay, *ad commune nocumentum* (to the common Danger). After a Verdict and Judgment against the Defendant, and a Writ of Error brought, the same Objection was made as in the Case last mentioned, that this Indictment would not lie, because it did not appear that this Bridge was in *Alta Via Regia* (in the King's Highway), and by the Stat. 22 H. 8. the Justices have only Power to judge of the Decays of Bridges in Highways. But adjudg'd, That the Word *Highway* is the *Genus* of all publick Ways; so that if there is a Common Foot-way, the Indictment will lie. 'Tis true, the Word *Communis* (common) doth

Mod. Caf. 255.
L. P.
6 Mod. 255.
Queen and
Saintiff.

Queen and
Saintiff, 6 Mod.
255.

Hardres 131.

doth not *ex vi termini* (by Force of the Term) imply that it is common to all; the Word *Publicus* (publick) had been better.

Queen against
the Duchefs of
Buccleugh.
3 Salk. 358.
Mod. Cafes
150. S. C.

Upon an *English* Bill in the *Exchequer*, to have Contribution towards the Repair of a publick Bridge in the *Manor* of *Sunning*, against the Freeholders and Copyhold Tenants of that *Manor*, and against those who had purchased the *Demesnes* of the *Manor* at several Times, the Charge being on the Plaintiff as Lord of the *Manor Ratione Tenuræ*; adjudg'd that nothing is Part of the *Manor* but *Demesnes* and *Services*; that they who have purchased any Part of the *Demesnes* are chargeable, but that the antient Tenants both Freeholders and Copyholders are not.

Adjudg'd upon a Trial at Bar on an Information for not repairing a *Common Bridge*, which the Defendants were bound to repair, that if a *Manor* is held by the Tenure of repairing a Bridge or Highway, which *Manor* afterwards comes into several Hands, that in such Case every Tenant of every Parcel either of the *Demesnes* and *Services* is liable to the whole Charge, but shall have Contribution of the Rest. 'Tis true, the Lord of the *Manor* may agree with every Purchaser to discharge him from repairing; but such an Agreement will not alter the Remedy which the Publick may have. It only binds the Lord, who shall never apportion the Charge, and make the Remedy for the Publick more difficult. Neither shall he take away the Remedy by Alienations to Persons unable to pay; and though the *Manor* comes to the Crown, the Charge shall continue.

There was an Indictment against Sir *John Bucknall*, for not repairing a Bridge, which he was bound to repair, *in quod* he was *Dominus Manerii*, &c. (for that he was Lord of the *Manor*). And this was quash'd after Conviction, because it is not said that he held the *Manor* by the Service of repairing the Bridge, and then he had been obliged *Ratione Tenuræ*; but he is not chargeable merely as Lord of the *Manor*.

The County of *Wilts* being indicted for not repairing of *Laycock* Bridge, they pleaded, That the Village of *Laycock* ought to repair it; and it was given in Evidence, That there was an Order of Sessions for *Laycock* to repair it; but that was held no Evidence to conclude *Laycock*, because where the Persons are known who should repair, the Sessions have no Power to make such an Order, but must tax the Inhabitants.

But generally, and of common Right, the whole County is liable, and not the Owners of the Land adjoining.

If Evidence can be given that a Man hath once repair'd, though not for many Years, yet those who have his Estate in the Land shall be liable, because it shall be supposed to

3 Salk. 350.
Mod. Cafes
191, 306.
Queen and
County of
Wilts.

Any Inhabitant
of the County
may be a Wit-
ness, but the
Jury must be
of the next
County. Dalt.
48.

be done by Reason of his Tenure, unless some other Cause can be shew'd.

And when a Charge is by Reason of Tenure, every Owner of the Land is to be charged proportionably. Salk. 358.

Where Lands are given towards the Repair of Bridges, it must be let by the Trustees for the best Rent, &c. without taking any Fine; and if the Trustees are negligent, the Justices may do it. 22 Car. 2.

In those Cases where Persons are bound to repair by Tenure, if the Party be indicted for not repairing, and found guilty, the King may pardon the Fine, but not the Offence, for that continues still, and he may be indicted again; for though the Suit is in the Name of the King, yet the Offence is prejudicial to the Subjects; and for that Reason it cannot be pardoned. 12 Rep. fol 32.

2. By Toll-taking.

He who hath any Profit for passing over a Bridge, ought to repair it, because *sentit commodum*, and therefore he ought *sentire onus*; so it is if a Bridge was built to serve a private Purpose, which afterwards became necessary for the Publick; as by making a new Current to the Mill, and a Bridge over it, the Owner of the Mill, and not the County, must repair it.

And in either of these Cases, he who repairs the Bridge must likewise repair the Way at each End of the Bridge, and they may enter into the Lands contiguous, and lay Stone, Timber, and other Materials there, which are necessary for Repairing, without being subject to an Action at the Suit of the Owner of the Soil, because it is for the common Good.

If it cannot be known who ought to repair, upon an Inquiry made by the Grand Jury in Sessions, then they are to present that the Bridge is in Decay, and to conclude it thus, *viz. Et ulterius jur' præd' præsentant, quod prorsus nescitur quæ Personæ, quæ Terræ, sive Tenementa, aut corpora politica, eundem pontem aut aliquam inde parcellam ex jure aut antiqua consuetudine reparare debent, aut consueverant*, (to wit, and the aforesaid Jury further present, that it is entirely unknown what Persons, or Lands or Tenements, or Bodies Politick from what Right or antient Custom ought or were used to repair the said Bridge or any Part thereof).

The Manner of Taxation.

When this is done, the Justices may call the Constables of every Parish, &c. and if they are not there, may send Warrants for them to appear at a particular Time and Place to make a Tax; for by the Statute of 22 H. 8. the Justices, without the Constables or two able Inhabitants of every Parish, cannot make a Tax.

But

But contrary to the Statute, the usual Course is to charge every Hundred with a Sum in gross, and to send it to the High Constable of each Hundred, who send their Warrant to the Petty Constables to gather it; by Virtue whereof they assess the Inhabitants in particular Sums, and collect it, and pay it to the High Constables, who bring it to the Sessions.

This is expressly against the Statute, but 'tis done to ease the Constables and Inhabitants of their Attendance; and being generally submitted unto, *Communis Error facit jus* (a common Error maketh right).

1 Annæ, St. 1.
c. 18.

But because this usual Way of Taxing was against the Law, and for that in many Places more Money was levied than was really necessary for Repairing, and also because the Money was misemploy'd when levied; therefore by a late Statute these Matters were remedied.

By this new Act, the old Stat. 22 H. 8. is recited and confirm'd in every Thing, unless in such as is alter'd thereby.

And by this Statute, the Justices in Sessions, upon such Presentment made as is before-mention'd, may assess every Town, Parish or Place within their Commission, in Proportion, as usually hath been assessed towards the Repair of the Bridge.

The Money thus assessed is to be levied by the Headborough of every respective Parish, or by such as the Justices in Sessions shall appoint.

Seçt. 1.

When it is levied, the Headborough must pay it to the High Constable of every Hundred within six Days after 'tis collected, and they must pay it to such Persons as the Justices by a Sessions Order shall appoint to receive it; and this Payment must be within ten Days after the Receipt by the said Constables.

Seçt. 1.

And then it is to be employed according to the Order and Directions of the Justices, for and towards mending the Bridges.

Now the Manner of levying it is this, *viz.* The Headborough must demand it of the Party, and if it is not paid within ten Days after the Demand, he may levy it by Distress and Sale of his Goods, rendring the Overplus, the necessary Charges of the Distress being first deducted.

Seçt. 3.

And if any of the Officers neglect to assess, collect or pay the Money, they forfeit 40 s. for every Offence.

Seçt. 3.

So likewise if the Receiver, who is appointed by the Justices, pays any Money without this Order, he forfeits 5 l. which must be applied to repair the Bridge.

Seçt. 4.

And no Fines upon Presentments or Indictments, &c. shall be returned into the *Exchequer*, but shall be paid to such Receiver.

Seçt. 5.

Also all Matters concerning repairing and amending Bridges shall be determined in the County where they lie, and

and not elsewhere; and no Presentment or Indictment shall be removed by *Certiorari*.

'Tis likewise provided, that the Justices may allow to any Person concerned in the Execution of the Act, 3 *d.* in the Pound, out of the Money collected; and that if any Suit is brought for putting the Act in Execution, the Defendant may plead the General Issue, and give the Act of 22 *H.* 8. and this Act in Evidence; and if he has a Verdict, shall have double Costs.

By this Act 'tis further provided, That the Evidence of the Inhabitants of such Places where the Bridges are in Decay, shall be taken and admitted at any Trial upon an Information or Indictment, &c.

And lastly, it takes Notice of some private Bridges; as for Instance, the Statute of 23 *Eliz.* for rebuilding *Cardiff's* Bridge is repealed, and that from henceforth that Bridge shall be reputed a Common Bridge, and repaired by the County of *Glamorgan*.

That the Wardens and Assistants of *Rochester* Bridge shall be chosen every Year on *Friday* in the Week next after *Easter* Week.

And likewise that Money is to be levied for rebuilding and repairing the Piers in the Port of *Whitby*.

By 12 *Geo.* 2. c. 29. §. 13. None of the Money raised in Pursuance of that Act, is to be applied to the Repair of any Bridges till Presentment made by the Grand Jury at the Assizes, Great Sessions, General Gaol-Delivery, or General or Quarter-Sessions of the Peace, of the Insufficiency or Want of Repair of the said Bridges, &c. By 14 *Geo.* 2. c. 33. Justices at their Quarter-Sessions may purchase Lands not exceeding half an Acre, which the Treasurers are to pay for out of the County Stock, to be convey'd to Trustees in Trust for the Rebuilding, Repairing, or Enlarging County Bridges.

Order of Quarter-Sessions held 4 *January* 1735, in *M.* and continued by several Adjournments, and held *July* following, for making a Rate to raise 200 *l.* for the Repair of *Brentford* Bridge; founded on 1 *Ann.* 3. Exceptions. 1. To the Caption, that it does not set forth the several Adjournments. 2. That the Grand Jury have only presented it to be a publick Bridge, and not a County Bridge. 3. That they have order'd the Constables and Church-wardens to assess and collect the Money; whereas they should have assess'd it themselves, and order'd the Constables to collect it. *Lee*, C. J. and the Court thought, as the Justices laid the general Rate, the Assessment by the Church-wardens in their respective Parishes was the properest Method; Justices upon a *Certiorari* ought to return Authority sufficient to justify their Jurisdiction, which is called the *Caption*, tho' the Commencement of the Sessions must be shown to conform to the Act, the Continuance needs not be

set forth; and if 'tis aver'd to be by proper Adjournments, 'tis sufficient. As to the second Exception, and the Jury's not presenting it to have been usually repaired, the Court were in doubt. *H. 1737-8. King and Justices of Middlesex.*

An Indictment where a Bridge is in Decay, and 'tis not known who shall repair it.

Suffex, to **T**HE Jurors for our Sovereign Lord the King, wit, upon their Oath present, That the publick and common Bridge situate in the King's Highway over the River of L. within the Parish of H. in the said County of Suffex, commonly called, &c. is and for some Years now last past hath been very ruinous, and in the greatest Decay for Default of due Repair and Amendment of the same, so that the Subjects of our Sovereign Lord the King cannot, nor dare not pass over, return, and go upon the said Bridge, by themselves, or with their Horses, or Carriages without great Danger, to the common Nuisance of all the Subjects of our said Sovereign Lord the King, whose Interest it is by Reason of their Business there to pass over; and the Jurors aforesaid further present, that it is not certainly known, what Persons, what Lands or Tenements, or Bodies Politick by Right or by antient Custom ought or have been accustomed to repair the same Bridge, or any Part thereof.

If it is known who ought to repair *Ratione Tenuræ* (by Reason of their Tenure), then the Indictment must be thus to wit, after the Recital that it is in Decay, add, And that R. B. by Reason of his Tenure, or of his Manor of A. with the Appurtenances in the County of Suffex aforesaid ought to repair and amend that Bridge, and that the said R. B. and all others whose Estate the said R. B. hath in the same Manor of, &c. ought, and have been accustomed (from the Time whereof the Memory of Man is not to the contrary) to repair and amend that Bridge, when and so often as it should be necessary, &c. *Godb. 346, 347.*

If the Inhabitants of a particular Place ought to repair then say, And that the Inhabitants of, &c. for the Time being, and each of them for their own Part ought to repair sustain and maintain the said Bridge.

'Tis not always necessary, to set forth *ad commune nocumentum*, for if it is that *Ligei Domini Regis* cannot pass *ad nocumentum eorum*, the Word *Ligei* takes in all the King's Subjects, and then *ad nocumentum eorum* amounts to as much as *commune nocumentum*. 2 Leon. 183.

Two were indicted for not repairing a Bridge, but the Indictment was quash'd, because it was not alledged that the Bridge was over the Water, or that it was ruinous and decay'd, or that the Defendants *debent & solent reparare Ratione Tenuræ* (ought and used to repair by Reason of their Tenure); for a Prescription against a common Person to repair a Bridge, cannot be, unless it is *Ratione Tenuræ*. Gold. 346.

So an Indictment for pulling down a Bridge *in via regia* (in the King's Way) was held good, though it did not shew that it was a common Bridge. 4 Leon. 40.

Suffex, to wit, At the General Quarter-Sessions of the Peace, &c. of our Sovereign Lord the King held, &c.

Whereas the Inhabitants of H. in this County, were formerly indicted for not repairing of a Bridge, called, &c. now in Decay; And whereas at the Midsummer Sessions held for this County, in the Year, &c. upon the Trial of the Traverse join'd, the County having Notice, it was then and there found that the said Inhabitants ought not to repair the said Bridge. And whereas the Jury, &c. having presented, that it is not known what Hundred, Lands or Tenements, Town or Parish, or what Person certain, or Body Politick, ought of Right to repair the same: Therefore, according to the Form of the Statute in that Case made and provided, it is now order'd by this Court, That the said Bridge shall be made and repair'd by the Inhabitants of, &c. within which the said Bridge standeth; and that the Justices of Peace of that Division would take Care for the raising Money for and towards the Repair of the said Bridge.

Sessions Order for repairing a Bridge.

The Justices Warrant to the Churchwardens, &c. to make a Tax for a County-Bridge.

To the Churchwardens of the Parish of, &c.

Suffex, to wit, Whereas the Bridge called, &c. within the said County, was lately in Decay, and unrepaired, and by an Order made at the Sessions, &c. in the County aforesaid, the said Decays and Reparations were ordered to be amended at the Charge of the County, and have been amended accordingly; the proportionable Part of which Charge thought

Vide ante the King and Justices of Middlesex, and 1 Ann. &c. that the Justices are to assess the general Rate, though the Churchwardens may assess their respective Parishes. Four Justices, Quorum unus.

fit to be imposed upon the Division of, &c. doth amount to, &c. and the proportionable Part of the same thought fit likewise to be imposed upon the Parish of, &c. doth amount to, &c. of like lawful Money: These are therefore in his Majesty's Name, to command you the said Churchwardens, that you do forthwith, after Notice given, make a Taxation on all and every the Inhabitants of the said Parish for the raising the said Sum of, &c. so imposed on the said Parish, and that you do bring the said Tax fairly written and subscribed by you, unto us, at the House of, &c. on Monday, &c. to the End we may farther proceed therein, as to Justice doth belong. Given under our Hands and Seals, &c.

A Warrant to collect the Tax.

To J. O. and T. B. Inhabitants of the Hundred of L, in the said County, &c.

Suffex, to **T**Hese are to require you, that you forthwith wit, collect the several Sums of Money mentioned in the Taxation, herewith delivered unto you, on the several Persons mentioned, and that you pay the same unto R. N. of, &c. whom we have appointed General Receiver of the said Money so to be raised for the Purpose aforesaid, deducting out of the same only 30 s. by us allowed unto you, for and towards your Care and Pains in collecting and paying the same. And in Case of Refusal or Neglect of Payment by any of the said Parties, of the particular Sums on them respectively taxed, after Demand thereof, that then you certify unto us the Name or Names of the Person or Persons so refusing, with all convenient Speed. Given under our Hands, &c.

A Warrant, for Non-payment, to levy the Sum by Distress.

To the Constables, &c.

Four Justices.

Suffex, to **W**Hereas Complaint hath been made unto us, by wit, &c. who were duly appointed to collect the Money imposed upon the Parish of, &c. for and towards the Repairing the Bridge of, &c. in the said County, that the several Persons, whose Names are under-written, have refused to pay the respective Sums to which they were severally taxed for the Purpose aforesaid, although the same had been duly demanded of them respectively: These are therefore to require you to levy the several Sums aforesaid, by Distress and Sale of the several Goods of the said Offenders; and in Default of such Distress,

Directs, that you certify us thereof. Given under our Hands and Seals, &c.

But the safest Way for the Justices, is to do all Things which relate to Bridges in the open Sessions; and the Precedents above-written are when the Statute is pursued; for tho' it is not expressly directed by the Statute, that the Proceedings shall be in the Sessions, where it is not known who shall repair, as it is where the Person is known, yet my Lord Coke's Advice is to proceed there.

The Purport of the Statute, where 'tis known who shall repair, is, *viz.* 2 Inst. 704. upon 22 Hen. 3. c. 5.

1. Four Justices, *Quorum unus*, may call before them the Constables of every Parish, or two Inhabitants thereof.

2. They may, with their Assent, tax every Inhabitant.

3. After the Tax made, they must write the Name of every Man taxed in two Rolls intended.

4. They must appoint two Collectors for ever Hundred, and give them one Part of the Roll under the Hands and Seals of the Justices.

5. By Virtue thereof the Collectors may distrain.

6. Justices may appoint two Surveyors to view the Repairs, and cause the Decays to be amended.

7. Both Collectors and Surveyors must account to the Justices, who may send Process against them returnable in Sessions, and commit them.

See the Statutes 12 Geo. 1. and 1 Geo. 2. § 2. for building a Bridge cross the River *Thames* from *Fulham* to *Putney*. *Vide* Treasurer of the County Stock, and 12 Geo. 2. c. 29. §. 13. That no Bridges, &c. are to be repaired, but upon Presentation of the Grand Jury at the Assizes, Great Sessions, Gaol-Delivery, General or Quarter Sessions of the Peace, of the Insufficiency, Inconveniency or Want of Repair of the Bridges, &c. And 14 Geo. 2. P. 652. That after 24 June 1741. the Justices of the Peace of any County, &c. at their General Sessions, or General Quarter-Sessions, may purchase of, or agree or contract with any Person or Persons, Bodies politick or corporate, for any Piece or Parcel of Land adjoining or near to any County Bridge within the Limits of their respective Commissions, for the more commodious enlarging or convenient rebuilding the same; so that they do not exceed one Acre in the Whole for any such Bridge: To be paid for by the County Treasurers out of the Monies raised by 12 Geo. 2. c. 29. the Treasurers being authorised by Orders under the Hands and Seals of the Justices of the Peace, at their General or Quarter-Sessions; who are to appoint Persons to whom the Lands are to be convey'd in Trust, and for the Uses and Purposes of enlarging and rebuilding such Bridges respectively.

Buggery.

THIS is an Offence against the Order of Nature committed by Mankind with Mankind or Beasts, or by Women with Beasts.

25 H. 8. c. 6.

The Words of the Statute which makes the Offence Felony, (*viz.*) If any Person shall commit the detestable Sin of Buggery with Mankind or Beast, &c. which Word, *Person*, extends as well to a Woman, as to a Man; and as my Lord Coke tells us, that Word might be used by the Law-makers; because a little before that Act was made, a great Lady had committed Buggery with a Baboon, and conceived by it.

3 Inst. 59.

What makes the Offence.

3 Inst. 59.

There must be *penetratio* & *emissio Seminis*; for the one without the other will not make the Sin; and therefore the Indictment must be, *Quod carnaliter cognovit*, &c.

In my Lord Audley's Case, which happen'd Anno 6 Car. 1. and who was tried by his Peers; the Fact was *Pollution*, and *using a Man upon his Belly Sodomitically*, without Penetration; and the Lords demanded of the Judges whether this was Buggery by the Statute 25 H. 8. The Lord Chief Justice Hyde told them it was; but *Richardson*, the Chief Justice of the Common Pleas, was of another Opinion: And this might create different Opinions amongst the Peers of that Trial, who were twenty-seven in Number, whereof twelve acquitted him of the Buggery, and fifteen found him guilty.

The Punishment. 3 Inst. 59.

It was anciently punished by Death: But the old Writers differ in the Manner; for some say, the Offender must be burnt; others, that he shall be buried alive; and some say, the Man was to be hanged, and the Woman drowned; but now by the Statute of 25 H. 8. c. 6. 'tis made Felony without Benefit of Clergy.

'Tis true, this Statute was repealed by 1 Mar. but it is revived by 5 Eliz. c. 17.

3 Inst. 59.

Agens & *consentiens pari poena plerantur* (the Agent and Party consenting are punished with like Punishment), *viz.* by hanging till they are dead, unless the Party consenting is within the Age of Discretion, and then it is not Felony.

Hutt. 115.

And this may be the Reason why the Age of the Party is expressed in the Indictment, tho' I find it omitted in my Lord Audley's Case for this very Offence; and probably his Indictment was drawn by that of Mr. *Stafford*, herein after mentioned, for they vary only in this Particular, and the Word *motus* is left out of the one, but it is *motus* & *seductus* in the other.

In Easter Term 5 Jac. one Mr. *Stafford* was indicted, and found guilty of this Offence, for which he was executed; and because

because my Lord Coke tells us, that the Indictment was drawn 3 Inst. 59. with great Advice, I have thought fit to copy it here.

An Indictment for Buggery.

Midd. to **T**HE Jurors for our Sovereign Lord the King Co. Entr. 352.
wit. upon their Oath present, That H. S. late of London, Esq; not having God before his Eyes, nor respecting the Order of Nature, but being moved and seduced by the Instigation of the Devil, on the 12th Day of May, &c. at the Parish of St. Andrew in High Holborn in the said County of Middlesex namely, in the Mansion-house of one M. B. there with Force and Arms made an Assault upon one R. B. a Male Child about the Age of sixteen Years, and then and there wickedly, devilishly, feloniously, and against the Order of Nature, committed the Venereal Act with the said R. B. and then and there carnally knew him the said R. B. and then and there wickedly, devilishly, feloniously, and against Nature, did and committed with the said R. B. that sodomitical, detestable and abominable Sin called Buggery (not to be named among Christians), to the great Displeasure of Almighty God, and to the Disgrace of all Mankind, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

Buildings.

BY Stat. 6 Annæ all Buildings within London and the 6 Annæ, c. 31.
weekly Bills, on old or new Foundations, are to be sect. 4.
built as that Act directs, on Forfeiture of 50*l*. one Moiety to the Informer, and the other to the Church-wardens, &c. for the Use of the Poor of the Parish, to be levied by Warrant from two Justices by Distress and Sale, &c. the Conviction to be on Oath or View of one or more Justices; and if no Distress, the Offender to be committed, &c.

See Tit. Fire, the Warrants hereupon.

The 11 Geo. 1. recites the above Act, and also 7 Ann. 7 Ann. c. 17.
c. 17. and enacts, That Builders pulling down a Partition- sect. 8, 9, 10.
Wall shall give three Months Notice in Writing to the Owner or Occupier of the next adjoining House, of his Intention to pull down such Wall, to the Intent the same may be viewed by four Workmen, two named by the Builder, and two by the Owner or Occupier of such next House; and if either Party refuse to nominate, the other may name the four Workmen, who shall view the Party-Wall intended to be pulled down, and the Majority of the Workmen shall certify

to the next General Quarter-Sessions, that it is defective, &c. and if either Party think himself aggrieved by such Certificate, the Justices shall summon before them such of the Workmen, or other Person, as they think fit, and examine them upon Oath; and upon such Examination shall make such Order, (which shall be conclusive) as they think reasonable.

The first Builder may enter and shew the next House, (if the Owner or Occupier will not) and may build the Party-Wall, as the Act directs, and the other Party shall pay Half the Expence, at 5 *l.* a Rod. See the Act, and observe this is only within the Bills of Mortality, and the Parishes of St. Mary le Bone, Paddington, Chelsea, and St. Pancras.

Bullion.

6 & 7 W. 3.
c. 17. sect. 8.

Persons having unlawful Bullion to be committed by Warrant of one Justice (or Wardens of the Goldsmith's Company, &c. within the weekly Bills, or two Justices if elsewhere) for six Months.

And two Justices may grant Warrants for Constables to search Houses suspected to have unlawful Bullion, and to break open Doors, Boxes, &c. to that End.

Apprehenders of Clippers, Washers, Counterfeiters, or Filers of the current Coin, to have 40 *l.* paid them within one Month after Conviction on the Judge or Justice's Certificate. Persons guilty, if they convict two shall be pardoned, and an Apprentice making a Discovery shall be made a Freeman.

Burglary.

Moor 660. c.

903.

Hal. P. C. 79.

IS a Breaking and Entering of a Mansion-house in the Night-time, with an Intent to commit Felony, whether such Felonious Intent be executed or not.

But an Infant under fourteen, a natural Fool, or a very poor Person, who shall enter a House, being compelled by Hunger are not Burglars.

Upon this Definition, these Things may be observed :

1. What is a Breaking, &c. and where a Burglary may be committed without an actual Breaking.

2. What

2. What is an Entry, and where Burglary may be done without an actual Entry by the Person himself.
3. What shall be esteemed a Mansion-house, and what Places make the Offence Burglary, and what not.
4. The Intention of the Person is to be considered.
5. Clergy, &c.

1. As to the First, the Entering of an House with the Doors open, is a Breaking in Law; yet 'tis not Burglary, unless the Door, Window, or Wall be broken, or the Latch drawn, or the Door unlock'd. H. P. C. 80.

If a Man comes into an House, and enters into a Chamber, and there breaks open a Trunk, and steals Money or other Goods; this is no Burglary, because the Trunk was no Part of the Dwelling house: But in such Case, if he breaks open the Chamber-Door, or any Door of a Cup-board, which is fixed to the Freehold, this is an actual Breaking the House. *Kelynge* 58, 59.

2. But Burglary may be committed without an actual Breaking, as by those who watch to prevent a Discovery, whilst their Companions break the House. Hal. P. C. 81.

By coming down a Chimney.

By entering with the Help of a Key.

By entering, the Door being open, and the Owner of the House retiring to a Chamber, which the Offender breaks open.

By breaking Glafs in a Window, and hooking out Goods.

Anderson 114. *Poph* 42.

By pretending themselves to be robbed, and raising Hue and Cry, and with a Constable demanding Entry, the Owner opens his Doors, then they bind the Constable and rob the House; for this is *in fraudem Legis* (in Fraud of the Law.) H. P. C. 81.

By the Help of a Servant within opening the Door or Window, and the Thief entering; it is Burglary in him, and Robbery in the Servant. Dalt. 99.

The Master lies in one Part of the House, and the Servant in another Part, who in the Night draws a Latch, and enters the Chamber of his Master, with an Intent to murder him, 'tis Burglary. Hutt. 20. Edmond's Case.

Anno 17 *Car.* 2. one *Far*, a Solicitor, had obtained Judgment against the casual Ejector, and the Sheriff delivered Possession of the House, which he entered, and sent the Defendant to *Newgate* for want of Bail, and carried away Goods to a considerable Value; but having no Colour of any Title to the House, he was found guilty of Felony. 2 Sid. 254.

ny; and though a Solicitor, he could not read, and was hanged.

Hal. P. C. 80. By putting the Hand or a Hook in the Window, and taking out Goods.

H. P. C. 80. By turning the Key, when the Door is locked on the Inside.

3. What is a Mansion house. of the Law.

Dyer 99. And therefore an Indictment against the Offender, for that he *Burglariter fregit* (without saying *intravit*) *Ecclesiam in nocte ad spoliand' & deprædand' bona parochianorum in eadem existent'*, (burglariously broke (without saying entered) the Church in the Night, to spoil and take the Goods of the Parish, being in the same) but took nothing; this was held good.

Hal. P. C. 82. Where a Man hath two Dwelling-houses, and dwells in each by Turns, and one is broken, though no Person in it, it is Burglary.

Hutt. 33. A Man had a Lease of a Shop, which was in the Dwelling-house of another, and the Lessee worked there in the Day-time, but lay in another House, the Shop was broke open in the Night, and the Goods stolen; this is not Burglary, because it was not a Mansion or Dwelling-house, for it was severed from the House by the Lease.

Hal. P. C. 83. A Chamber in a College, or Inn of Court, though no Body therein; or the Chamber of a Guest, broken by the Inn-keeper, with an Intent to rob.

Now the Reason why 'tis Burglary to break open a Chamber in the Inns of Court, is, because every Gentleman hath a several Property in his Chamber; but *Somerse's House* or *Whitehall*, are *Domus Mansionales* of the King; and if a Chamber is broke open there, it must be so alledged in the Indictment, and not *Domus Mansionalis* of the Person who lodged in it. *Kelynge* 27.

Hal. P. C. 82. A Barn or Stable, contiguous to a Dwelling-house: But a Shop distinct from the House, is not.

Nor a Booth; but yet by a particular Statute, it is made Burglary to break it open.

And by a late Statute to break open a Shop, or Ware-house belonging or used with the Dwelling-house, in the Day-time, and taking Money or Goods to the Value of 5*s.* though no Person is therein, is Burglary: Which see *postea*.

4. The Intert. And this must be to commit Felony; if it be to do a Trespas, it is not Burglary for breaking and entring: But going away may be Felony, but it is not Burglary.

Hal. P. C. 83. If Thieves in the Night come to a Dwelling-house, and a Person within opens the Door to resist them, and one of the Rogues shoots into the House, the Door being open, and missing the Person, breaks the Wall on the other Side with the

the Bullet ; this is not Burglary, because the Breaking the Wall with the Bullet was not a Breaking the House with Intent to commit Felony. *Savil* 59.

But yet where one intended to murder, and for that Purpose broke a Hole in the Night, and perceiving where the Person was, shot at him thro' the Hole, but missed him ; this was held Burglary. 1 *And.* 114, 115.

And so are all the late Authorities, &c. That breaking a Dwelling-house in the Night-time, with an Intent to kill or rob, though there is not any Person in the House, yet it is Burglary. *Moor* 660. *Poph.* 52.

It is true, all the antient Precedents were only that the Criminal *noctanter felonice* * *fregit* (feloniously broke in the Night-time) ; but in the later Indictments it is usually inserted that some Body is in the House, and put in Fear ; because by the Statute of 23 *H. 8.* Clergy is taken away from those who rob a House, the Owner or Dweller, his Wife, Children or Servants, then being within, and put in Fear. *Moor* 660, 661. *Poph.* 43.

Entering in the Day-time, and lying privately until Night, then robs and departs, it is not Burglary ; but if he breaks open any Door to get out, it is Burglary.

5. If an House was broke open, with an Intent to commit Felony, and no Body therein, in former Times the Offender had his Clergy ; but if the Dweller had been within, and put in Fear, then by the Statute of 23 *H. 8. cap. 1. §. 3.* Clergy was taken away, for this was esteemed an Aggravation of the Offence ; and therefore the Precedents in those Days were, *viz. Quod Domum Mansionalem noctanter Felonice & Burglariter fregit & intravit*, (to wit, that he feloniously and burglariously broke and entered the Dwelling-house,) some Person being therein, &c.

Afterwards 18 *Eliz. cap. 7. §. 1.* Clergy was taken away in all Cases of Burglary ; and *Anno* 39 *Eliz. c. 15.* a Law was made, That if a House was broke open in the Day-time, and Money and Goods to the Value of 5 *s.* taken away out of the House, or Out-house thereunto belonging, though no Person therein, yet it is Felony without Benefit of Clergy.

But because Goods were often stolln in a Dwelling-house without any actual Breaking, a Law was made, That if any Person feloniously take away Goods, being in a Dwelling-house, the Owner, or other Person being therein, and put in Fear ; or shall rob any Dwelling-house in the Day-time, any Person being therein ; or shall be Accessary to the same ; or shall break any Dwelling-house, Shop, or Ware-house thereunto belonging, in the Day-time, and feloniously take away Goods to the Value of 5 *s.* tho' no Person therein ; or shall

* *Domum Mansionalem* ; for these Words make it Burglary, tho' 'tis not set forth that somebody was in the House, and put in Fear. 1 *And.* 303. 661 *Poph.* 43.

5. Clergy.

3 & 4 Will. c. 9. sect. 1.

shall counsel, hire, or command another to commit Burglary, shall not have Clergy.

5 Annæ, c. 32.

He who apprehends and prosecutes a House-breaker to Conviction, shall within a Month afterwards receive of the Sheriff of the County, &c. 40 *l.* upon producing the Certificate of the Judge, or Justices, before whom the Person was convicted.

7 G. c. 23.

The Reward of 40 *l.* for apprehending and convicting any Person or Persons for Burglary, shall be paid without any Deduction or Fee, for every Offender who shall be apprehended and convicted for the said Crime, other than 5 *s.* for drawing and writing the Certificate.

12 A. c. 7. sect. 1.
1. sect. 3.

If any Person enter into the Mansion or Dwelling-house of another, either *by Day* or *by Night*, *without breaking* the same, with an Intent to commit Felony, or being in the House commit any Felonies, and in the Night time break the House to get out, he is guilty of Burglary, and hath not Clergy.

12 A. sect. 1.
sect. 3.

Any Person feloniously stealing Money or Goods to the Value of 40 *s.* or more, being in the *Dwelling-house* or *Out-house* thereunto belonging, though the same was not actually broken open; and though any Person be or be not in such Dwelling-house, or Out-house; and the *Aider* and *Assister* therein, shall be guilty of Burglary, and lose the Benefit of Clergy.

Sid. 171.

If two are indicted for Burglary, and one his found guilty of Felony, and the other of Burglary; it is a good Verdict as to the Felony, because the Jury might have found both guilty of Felony; but they cannot find one guilty of Burglary, and the other of Felony, upon the same Indictment and Evidence.

This was the Case of a Father and his Son; the Father, being found guilty of Felony, was discharged.

If two are indicted for the same Burglary, and one convicted, and the other acquitted, he who was acquitted shall never again be tried for the Fact; but if he took any Goods out of the House, which were not mentioned in the Indictment, as Money of any Servant, &c. he may be indicted for that Felony, because the Facts are several Felonies. *Kelynge* 30.

An Indictment for Burglary.

Suffex, to **T**HE Jurors for our Sovereign Lord the King
wit, upon their Oath present, That T. P. of H.
in the County aforesaid, Labourer, on the fourth Day of May
in the fourth Year of the Reign, &c. with Force and Arms, did
feloniously break and enter the Mansion-house of R. B. Esq; at
B. in

*in the County aforesaid, * in the Night-time, to wit, between the Hours of ten and eleven of the Clock in the Evening of the same Day (one R. N. then being in the same House in the Peace of God, and of our said Sovereign Lord the King), and did then and there feloniously steal, take, and carry away some Pounds of lawful Money, in Ready Money, of the Goods and Chattels of the said R. B. then and there found in the said House, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.*

* It must be in the Night-time, for otherwise 'tis but Felony. Cro. El. 183. Savil 47.

And that one R. H. of L. in the said County, Yeoman, before the Felony and Burglary aforesaid committed by him the said T. P. in the Manner aforesaid, to wit, on the sixth Day of April in the fourth Year of the Reign, &c. at B. aforesaid in the said County, feloniously abetted, procured and excited the said T. P. to commit the said Felony and Burglary, in Manner aforesaid, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Accessory before the Fact.

And that one J. O. of H. aforesaid in the said County, Labourer, knowing that the said T. P. had done and committed the said Felony, in the Manner aforesaid, on the said fifth Day of May in the fourth Year aforesaid, at B. aforesaid in the said County, feloniously and wilfully received, comforted and entertained the said T. P. after the said Felony by him the said T. P. so done and committed against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Accessory after the Fact.

If any Person commits Burglary, House-breaking, Felony, in stealing Horses, Money, Wares, or Goods, from whom the Benefit of Clergy is taken away by the Act of 11 Will. and being out of Prison, shall discover two more Offenders and convict them, he shall have a Pardon, which shall be a good Bar to an Appeal. 11 W. c. 23.

Burials. See Wool.

Adjudged that in Strictness no Funeral Expences are to be allowed against Creditors, but only for the Coffin, ringing the Bell, the Parson's, Clerk's, and Bearers Fees, where they are due, but not for the Pall or other Ornaments. 1 Salk. 296. Shelley's Case.

Upon a Motion for a Prohibition to the Spiritual Court, to lay Proceedings for a customary Fee of Ten Pounds, pretended to be due to the Dean and Chapter of Exeter, for burying in the Cathedral Church; 1 Salk. 334. vid 2 Keb. 778. contra.

Adjudged that at Common Law Burials ought to be in the Church yard, and no Fee is due; it is true when Leave is required

quired to bury a Man in the Church, the Parson may insist on his own Price; and if there is a Custom to pay what he demands, and the Custom is denied, it is triable at Law, and a Prohibition shall go *non propter defectum jurisdictionis* (not for Defect of Jurisdiction, but of the Trial).

Burning of Houses: Or Arson.

Hal. P. C. 85. 'TIS Felony at Common Law, maliciously and voluntarily to burn the House of another.

Whether. { 1. There must be an actual Burning, and what that is.
2. It must be maliciously and voluntarily.
3. It must be the House of another.

Hal. P. C. 85. 1. 'Tis not necessary that the whole House should be burnt, for 'tis Felony to set on Fire and burn Part of it.

2. It must be done maliciously and voluntarily, and so in the Indictment, *Quod voluntarie & ex malitia sua præcogitata, &c.* (that voluntarily and of his Malice aforethought &c.) for if 'tis done by Mischance or by Negligence, 'tis not Felony.

Hal. P. C. 85. Sometimes the Law implies Malice; as if the Offender intends to burn the House of *A.* only, and by this Means the House of *B.* is set on Fire, this is Felony, for the Events shall be coupled to the Cause, which was malicious.

3. The House of another. Formerly it was Felony to burn the Frame of an House, or the bare Attempting to set on Fire a Stack of Corn; *contr Hawk. P. C. 105.* and * 'tis still Felony to set on Fire a Stack of Corn in *Northumberland, Cumberland, Westmorland, or Durham.*

* 43 Eliz. c. 13. sect. 2.

22 & 23 Car 2. c. 7.

And even now, 'tis Felony in the Night-time to burn Barns, Stables, Ricks of Corn, Hay, &c. or any of the Out-houses, which are contiguous to the Dwelling-house, and the Offender is not to have Clergy; but he may choose Transportation.

Barham's Case 4 Co. 20.

But if a Barn stand remote, and is not the Parcel of the Mansion-house, then 'tis not Felony, unless it hath Hay or Corn in it.

Cro. Car. 376
Holme's Case. Jones 351.

Hal. P. C. 85.

He, who is in Possession of a House by Lease, sets it on Fire, with an Intention to burn his Neighbour's House; this was held to be no Felony, by the Opinion of three Judges, because the Offender being in Possession, it cannot be said to be done *Vi & Armis* (with Force and Arms); but Justice

Crow

Crook was of a contrary Opinion, because the Offence falls under the Definition of Felony, which is a capital Crime, committed *felleo animo* (with a bitter Mind); and here the Fact (tho' in his own House) was done maliciously, and so found by the Jury, and the Intention shall be coupled to it, which was *Nequiter factum & mala Conscientia* (craftily done, and with an evil Conscience).

A Captain, Master or Mariner, or other Officer belonging to a Ship, and burning or destroying it, or procuring the same to be done, to the Prejudice of the Owner or Merchant, must suffer Death as a Felon; and if committed where the Admiralty has Jurisdiction, it shall be tried by Virtue of a Commission under the Great Seal, in such Places in the Realm as shall be therein limited; and such Offender standing mute, or challenging above the Number of twenty Persons, shall suffer Death without Benefit of Clergy. 1 Ann. Stat. 2. c. 9. sect 4.

Threatning by Bills or Letters to burn a House was High Treason by 8 Hen. 6. c. 6. but that Act was repealed by 1 Ed. 6. c. 12. as to the Treason: But, says Lord Coke, the Felony still remains, for *in proditione implicatur feloniam*. 3 Inst. 67.

Setting Fire to any Delph or Pit of Coal, made Felony, by 10 Geo. 2. c. 32. §. 4.

An Indictment for Burning of an House.

Suffex, to **T**HE Jurors for our Sovereign Lord the King wit,
upon their Oath present, That J. O. late of H. in the said County, Labourer, on the second Day of December in the eighth Year of the Reign, &c. with Force and Arms, between the Hours of Five and Six of the Clock in the Evening of the same Day, came unto the * Mansion-house of R. B. of H. * It need not be said to be the Mansion-house, but only the House, which comprehends a Barn, Stable, &c. 3 Inst. 67.
aforesaid in the said County, Gentleman, (the same House being in the said County), and with a lighted Candle, which the said J. O. then and there held in his Hand, (or as the Case is) of his Malice forethought, did feloniously set on Fire the said House, by which Means the said House was then and there entirely burnt down; and so the said J. O. on the said second Day of December in the same Year above mentioned, at H. aforesaid in the said County, voluntarily, and of his Malice forethought, did feloniously set on Fire and burn down the Mansion-house aforesaid, in the Manner and Form above-mentioned, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

For

For burning a Barn with Corn in it.

Sussex, to **T**HE Jurors for our Sovereign Lord the King
 wit, upon their Oath present, That J. O. late of
 H. in the said County, Labourer, on the second Day of De-
 cember in the 5th Year of the Reign, &c. at L. in the said
 County, with Force and Arms feloniously broke and entered the
 Barn of R. B. situate at H. aforesaid in the said County, and
 then and there of his Malice forethought, and by the Instigation
 of the Devil, then and there voluntarily and feloniously placed
 lighted Fire in the Barn aforesaid, then filled with divers
 Grain and Sheaves of Corn, and then and there volunta-
 rily and feloniously burnt down with the said Fire the Barn
 aforesaid, with all the Grain and Sheaves of Corn above-men-
 tioned then being in the said Barn, and feloniously and volunta-
 rily entirely consumed the same with the said Fire, against the
 Peace of our said Sovereign Lord the now King, his Crown
 and Dignity.

Butchers.

BUtchers may be guilty of Offences against the Law,

- | | |
|---------------|-----------|
| 1. In buying | } Cattle. |
| 2. In killing | |
| 3. In selling | |

1. By 3 & 4 Ed. 6. c. 19. Buying of fat Cattle, and
 selling them alive, he forfeits them.

In London or Westminster, or within ten Miles, buying fat
 Cattle, and selling them alive or dead to another Butcher,
 the Seller forfeits the Value, by the Stat. 22 & 23 Car. 2.
 c. 10.

2. Killing of Calves to sell under five Weeks old, loseth
 6 s. 8 d. or Bullock, Steer or Heifer under two Years.

Killing in his Scalding-house, or within the Walls of
 London, forfeits 12 d. for every Ox, and 8 d. for every other
 Beast. 4 H. 7. c. 3.

3. Selling Swines Flesh mearled, or dying with the Mur-
 rain, shall be amerced for the first Offence, Pillory for the
 second, fined for the third, and abjure the Town for the
 fourth Offence. Ordinance for Bakers 67.

Selling of fat Oxen, Steers, Runts, Kine, Heifers, Calves, 15 Car. 2. c. 8.
 Sheep or Lambs, alive, forfeits double the Value; one f. 2.
 Moiety to the King, the other to the Informer.

Selling at unreasonable Rates, and not for moderate Value, loseth double the Value.

Conspiring not to sell but at Prices agreed on; the first Offence 10 l. to the King; and if not paid within six Days after Conviction; must have twenty Days Imprisonment; second Offence 20 l. and if not paid, then in the Pillory; the third Offence 40 l. and if not paid, &c. lose one Ear. 2 Ed. 6. c. 15.

Butcher using the Mystery of a Tanner, forfeits 6 s. 8 d. per Day, during the Time he useth both Professions; one Part to the King, another to the Prosecutor, and another to the City, Corporation, or Lord of the Liberty. 1 Jac. 1. 22 & 23 Car. 2. c. 20.
 c. 22.

The aforesaid Act 23 Car. 2. was continued by the Statute 5 Annæ, from and after the 25th of March 1707. for 5 Ann. c. 34.
 f. 2.

By which Act it is provided, That no Butcher, either by himself, his Servant or Agent, shall sell any fat Cattle, alive or dead, to another Butcher in London or Westminster, or within ten Miles thereof; if he doth, he forfeits the Value of the Cattle so sold, or offered to Sale; one Moiety to the Queen, the other to him who shall sue for the same; and if he recover, he shall have full Costs.

Vide 7 Ann. c. 6. That it shall not extend to selling Sheep, Lambs, Calves, dead, by one Butcher to another.

Butchers or other Persons wilfully or negligently gashing, slaughtering or cutting the raw Hide of any Ox, Bull, Steer or Cow in the flaying thereof, or the Skin of any Calf, or being so gashed, slaughtered, or cut as aforesaid, offering the same to Sale shall forfeit 2 s. 6 d. for every Hide, and 1 s. for a Calf's Skin; one Moiety to the Poor, and the other to the Informer, by 9 Ann. c. 11. §. 11.

Note, if aggrieved an Appeal lies to the next Sessions.

An Indictment for selling of unwholsome Flesh.

Suffex, to
 wit, **T**HE Jurors for our Sovereign Lord the King upon their Oath present, That T. T. late of
 in the said County, Butcher, on the second Day of Decem-
 ber in the fifth Year of the Reign, &c. at Lewes aforesaid in
 the said County hath fraudulently, craftily and deceitfully ex-
 posed to Sale unwholsome Flesh, that is to say, Flesh that was
 rotten, corrupt and puffed up with Wind, to the bad Example
 and great Danger of the Subjects of our Sovereign Lord the

Butter and Cheese.

*now King, and against the Peace of our said Sovereign Lord the
now King, his Crown and Dignity.*

Butter and Cheese.

Buying.

THE Statutes which concern this Matter, are,
By 3 & 4 Ed. 6. c. 21. None, except Inn-holders
or Victuallers, shall buy Butter and Cheese to sell again, ex-
cept by Retail in open Shop, Fair or Market, and not above
a Wey of Cheese, or Barrel of Butter, at one Time, in Pain
to forfeit double the Value.

What is to be done in } Buying
 } Packing } Butter.
 } Selling }

Selling.

4 & 5 W. & M.
c. 7. f. 2, 3, 4.
5.

By 4 & 5 W. & M. c. 7. The Buyer having approved
the Butter, the Seller shall not afterwards be liable to any Pen-
alties in the Act 14 Car. 2. and the Buyer must then set his
Mark or Name at Length on the Cask; afterwards, if the
Seller shall open or exchange the Cask, or if he pack bad
Butter, or mix Bad with Good, or do any Fraud, and be
convicted before the Justice, forfeits 20 s. for every Firkin
to be levied by Warrant of a Justice.

Packing.

13 & 14 Car.
2. c. 26. f. 2.

Old Butter shall not be packed with new, nor Whey-but-
ter with that made of Cream, nor salted with great Salt
nor with more than will preserve it; the Forfeiture is double
the Value of Butter false-packed, and six Times the Value
of every Pound wanting.

Sect. 4.

None shall repack Butter for Sale, on Pain to forfeit dou-
ble the Value.

Sect. 5.

It must be packed in Casks of dry and sound Timber
marked with the Weight of the empty Cask, and with the
first Letter of the Christian and Surname of the Packer at
Length, with an Iron, on Pain to forfeit 10 s. for every
Hundred Weight of Butter.

13 & 14 Car.
4. c. 26. f. 2.

He must deliver in every Kilderkin 112 Pounds, and
every Firkin 56 Pounds, and in every Pot 14 Pounds, be-
sides the Casks and Pots.

Sect. 6.

The said Offences to be determined by the Justices in the
Sessions, or in any Court of Record, in the Place where
committed, by Action of Debt, Information, Indictment,
Presentment; one Moiety to the Poor of the Parish where
the Offence is committed, the other to the Informer, and
double

double Costs, so as such Suit, &c. be within four Months after Sale of such Butter.

By the said Statute of 3 & 4 Ed. 6. Justices in Sessions may restrain the Retailing of Butter and Cheese.

A Warrant to distrain for the twenty Shillings Forfeiture.

To the Constable, &c.

Suffex, to **W** Hereas T. P. of H. in the County aforesaid, ^{4 & 5 W. & M.}
 Cheesemonger, hath been duly convicted be- ^{c. 7. l. 3.}
 fore me upon Oath of, &c. That he the said T. P. did mix
 in a Firkin bad Butter with good, after the same was sold to
 J. S. of, &c. after the Mark of the said J. S. was set on the
 said Firkin; by Reason whereof, he hath forfeited the Sum of
 20 s. to be equally divided between the Poor of the Parish of
 A. where the said Offence was committed, and the Informer,
 according to the Statute in that Case made and provided: These
 are therefore in his Majesty's Name, to command you to levy the
 said Sum of 20 s. so forfeited as aforesaid, by Distress and Sale
 of the Goods of the said T. P. restoring to him the Overplus,
 if any such shall happen to be, after your Charges for taking
 the said Distress shall be deducted. Given, &c.

Warehouse-keepers, Weigher, Searcher or Shipper of But- Sect. 4.
 ter must receive it, and take Care of it till it is shipped, and
 must ship it on the next Vessel, which shall come to carry it
 to London (except the Owner of the Butter order the con-
 tary) and shall receive of the Owner 2 s. 6 d. for every
 Load, and no more, and so proportionably; and if they or
 servants shall refuse to receive, &c. or take Care of the
 Goods, or to ship them, being convicted before a Justice by
 Oath of one Witness, &c. shall forfeit for every Firkin
 20 s. and for every Wey of Cheese 5 s. to be levied as
 aforesaid.

Warehouse-keepers, &c. shall enter into Books the Time Sect. 5.
 when Butter is received, the Quantity and Owner's Name,
 and when shipped, the Master's and the Vessel's Name, and
 to whom consigned, and the Book shall be open for any one
 to view. Warehouse-keeper neglecting any of these Mat-
 ters, being convict as aforesaid, forfeits for every one of the
 said Offences 2 s. 6 d. to be levied as aforesaid; and if no
 Distress, the Justice may commit the Offender till the Pe-
 nalty is satisfied.

Masters of Vessels refusing to take in Butter, &c. before Sect. 6.
 the Vessel is laden, shall forfeit, being convict, for every
 Firkin so refused, 5 s. and for every Wey of Cheese 2 s. 6 d.

to be levied as aforefaid ; one Half of all the Forfeitures to the Poor, and the other to the Informer.

Se^{ct}. 8.

This Act excludes not Cheesemongers free of *London* to fend their own Vessels, or such as they shall hire, for their own Goods ; neither doth it extend to the Counties of *Lancaster* and *Chester*, nor to the County of the City of *Chester*.

Se^{ct}. 10.

Persons may appeal from the Justices to the next Sessions, whose Determination shall be final : But the Appellant must first enter into a Bond of 20 *l*. Penalty to the * Person accused with one or more Sureties, such as the Justice shall approve, to pay Costs, in Case the Appellant is not relieved within a Month after the Appeal determined ; the Costs to be allowed by the Justices in Sessions.

* The Appellee.

As to the Bringing Butter to the Market in *York*, vide 8 *Geo. 1. c. 27*.

Buttons and Button-holes.

14 *Car. 2. c. 12.*

4 & 5 *W. & M. c. 10.*

THE Importation and Exportation of Buttons made of Hair, Silk or Thread, is prohibited ; they who sell or expose such imported Buttons to Sale, forfeit for every Offence 50 *l*.

The Importer forfeits 100 *l*. besides the Buttons, one Moiety to the King, the other to the Informer, who shall sue for it in any Court of Record within a Year after the Discovery of the Offence.

The Justices may issue out Warrants to seize Foreign Buttons.

10 *W. 3. c. 2.*
Cloth-Buttons.

And because many People were maintained by making Buttons with Needles ; therefore it was enacted, That no Person shall make, sell or set on Clothes, any Buttons made of Cloth, Serge, Drugget, Frize, Camlet or other Stuffs of which Clothes are usually made, or Buttons made of Wood only, and turn'd in Imitation of other Buttons, upon Forfeiture of 40 *s. per Dozen* ; one Moiety to the King, the other to the Informer, to be recovered by Action of Debt, &c.

But this Statute is eluded, by making Buttons of Horn, which are now worn by the common People.

8 *Ann. c. 6.*
Button holes,
&c.

And for making the Act of 10 *W. 3.* more effectual it is enacted by 8 *Annæ*, That none shall make, sell, set on, use or bind, or cause to be made, &c. on any Clothes or wearing Garments whatsoever, any Buttons or Button-holes made of or used, or bound with Serge, Drugget, Frize, Camlet or any other Stuffs of which Clothes and wearing Garments are usually

usually made, on Forfeiture of 5 *l.* for every Dozen of such Buttons or Button-holes; one Half to the King, and the other to the Informer; to be recovered either by Action of Debt, &c. or upon Complaint to two Justices, they are to summon and examine Witnesses upon Oath, and * *levy the said Penalty*, returning the Overplus: But Persons aggrieved by the Order of the Justices, may appeal to the next Quarter Sessions, after Notice given of such Order, who are to summon and examine Witnesses on Oath, and to hear and finally determine the Matter of the Appeal; and if Judgment is against the Appellant, shall award the other Party such reasonable Costs and Charges, as to the said Sessions shall seem meet.

* Note; the Manner of levying is not directed.

Appeal.

And to make the Act 8 *Annæ* more effectual, 'tis enacted by the Statute 4 *G. c. 7.* that after the 25th Day of *March*, 1718. no Buttons or Button-holes made of Cloth, &c. shall be made, or set on wearing Garments, on Forfeiture of 40 *s.* for every Dozen, and so in Proportion for a less Number, to be distributed after the Charges of Conviction deducted; one Moiety to the Informer, the other to the Poor of the Place; and if not paid upon Demand within fourteen Days after Conviction, then the Justice may issue his Warrant to levy it by Distress, and for Want of a Distress, then to commit the Offender to Gaol, there to be kept to hard Labour for three Calendar Months.

The Prosecution must be within three Months after the Offence is committed or discovered.

The Conviction must be before any one Justice, not concerned in the Matter of the Complaint, on the Oath of one or more Witnesses.

An Appeal to the Quarter-Sessions is also allowed by the Statute 4 *Geo. c. 7.* whose Determination shall be final, and Costs shall be allowed to the Party grieved.

An Appeal is allowed, as by the Statute 8 *Annæ*.

Persons prosecuted may plead the General Issue, and give this Act in Evidence, and if they recover they shall have treble Costs.

All Clothes or wearing Garments, with Buttons or Button-holes made of the same Cloths, Serge, &c. and exposed to Sale in any Fair or Market, Shop or Ware-house, or Dwelling-house, shall be forfeited, and applied to the Uses before-mentioned.

Any Taylor or other Person, causing his Servant to make Clothes contrary to this Act, shall be subject to the like Forfeitures and Penalties. This is a publick Act, and shall be so taken.

And *vide* 7 *Geo. 1. c. 12.* which inflicts like Penalty on the Person wearing such Buttons, &c.

A Warrant to seize Foreign Buttons.

* Bartered,
sold or ex-
changed.

Suffex, to **W** Hereas Complaint hath been made unto me, wit, That severall Parcels and Quantities of Hair-Buttons, and other Foreign Buttons, have been lately * imported into this Country, contrary to the Lawes and Statutes of this Realm: And whereas T. P. of, &c. is suspected to have such Buttons so imported in his Possession; These are therefore to authorize and require you to enter into the Shop, Warehouse or Dwelling-house of the said T. P. the same being open, and to search for and seize all Foreign Buttons whatsoever which you shall there find, imported contrary to the Lawes made and provided for prohibiting the Importation thereof. And hereof fail not, &c.

A Warrant to levy the 5 l.

To the Constable, &c.

* Or as the
Case is.

Middl', to **W** Hereas Complaint hath been made unto us R. B. and H. P. two of his Majesty's Justices of the Peace for the said County, that P. P. of, &c. Taylor, did on the 24th Day of July last past, at L. in the said County, set on a wearing Garment a Dozen of * Buttons made of Serge, contrary to the Statute in that Case made and provided. And whereas upon Examination of Witnesses on Oath, and due Proof thereof made, the said P. P. was convicted before us of the said Offence, by Reason whereof he hath forfeited 5 l. We do therefore require you or one of you to levy the said Sum of 5 l. on the Goods and Chattels of the said P. P. by Distress and Sale thereof, rendering to him the Overplus, if any shall be, and that you pay one Moiety thereof to his Majesty, and the other Moiety to the said R. C. who first informed us of the said Offence. Given, &c.

A War-

A Warrant to levy 40 s. for every Dozen of Buttons, &c.

To the Constable, &c. of *Hampstead*, and to the Keeper of the Common Gaol of, &c.

Middl', to **W** Hereas Complaint hath been made unto me, That A. B. of H. in the County aforesaid, Taylor, did on the second Day of July last past, at H. in the said County † set on one Dozen of Buttons on a wearing Garment, which Buttons were made and bound with Stuff, contrary to the Law in that Case made and provided: And whereas the said A. B. was duly convicted of the said Offence, on the Day and Year aforesaid, before me who am not concerned in the Matter of the said Complaint, by Reason whereof he hath forfeited 40 s. which he hath neglected or refused to pay unto the Constable of the Parish of H. by the Space of fourteen Days next after such Conviction as aforesaid, the same being lawfully demanded of him: These are therefore to require you to levy the said Sum of ‡ 40 s. on the Goods and Chattels of the said A. B. by Distress and Sale thereof, rendring to him the Overplus, and if no sufficient Distress can be found, that then you convey the said A. B. to the common Gaol, in, &c. and deliver him to the Keeper thereof, who is hereby commanded to receive him, and to keep him to hard Labour for the Space of three Calendar Months. Given, &c.

† Make, sell, or set on, or cause to be made, &c.
4 G. c. 7.

‡ A Moiety to the Informer, the other to the Poor.

Cards and Dice. See Game.

Cattle. See Pasture.

Buying of Cattle must be in open Fair or Market; and they must not be sold again in the same Fair or Market; the Forfeiture is double the Value. 3 & 4 Ed. 6. c. 19. f. 1.

Buying and selling alive, within five Weeks afterwards, the Forfeiture is double the Value; he must keep them for that Time in some Pasture. 5 & 6 Ed. 6. c. 14. §. 9.

This Offence is to be determined in Quarter-Sessions, by Inquisition, Bill, Presentment, Information or Testimony of two Witnesses upon Oath: Justices may appoint one Moiety for

for the King, and award a *Fieri facias* or *Capias* to the Prosecutor for the Rest.

Offence must be prosecuted within two Years after it is committed.

There was an Action brought in the Sheriffs Court in London upon the Statute before mentioned; and it was held, That it being a Penal Law, the Prosecution should be as directed by the Statute, *viz.* at the Sessions. *Latch* 192.

The above Act is continued in Part by 3 *Car.* 1. c. 4. further continued by 16 *Car.* 1. c. 4. altered by 15 *Car.* 2. c. 8. which is the Act now in Force, and the Informations, Actions, &c. are grounded thereon.

Cattle imported dead or alive, (except for Provision for the Vessel) are forfeited, one Moiety to the Poor, the other to him who seizes, but this is to be made appear in forty-eight Hours. See 18 *Car.* 2. c. 2. §. 1.

And the Master and Mariner of the Vessel shall be committed for three Months. See 20 *Car.* 2. c. 7. §. 5.

Seizors of Cattle imported out of Ireland are within six Days after Conviction to give Notice to the Church-wardens, &c. or shall forfeit 40 s. for every of the great Cattle, and 10 s. for every Sheep or Swine. See 32 *Car.* 2. c. 2. §. 6.

An Information upon the Statute 3 & 4 Ed. 6. cap. 19. for buying Cattle out of a Market.

Suffex, to **R.** N. who prosecutes in this Behalf, as well
writ, **R.** for our Sovereign Lord the King as for him-
self, comes here in Court in his proper Person on the fifteenth
Day of January in the sixth Year, &c. and as well for our
said Lord the King as for himself, gives this Court to under-
stand and be informed, That J. O. late of, &c. on the twenty-
first Day of November in the sixth Year, &c. and on divers
other Days and Times, between the said twenty-first Day of
November and the Day of Exhibiting of this Information,
did buy out of a Fair or Market, that is to say, at A. in the
said County, of one T. P. of, &c. and of divers other Persons,
to the said R. N. unknown, ten Calves, of the Price of twenty
Shillings for each Calf aforesaid, contrary to the Form of the
Statute in such Case made and provided; wherefore the said
R. N. who prosecutes in this Behalf, as well for our said Lord
the King as for himself, prays the Advice of the Court in the
Premises, and that the said J. O. may forfeit twenty Pounds,
that is to say, the double Value of the said Calves so by him
bought contrary to the Form of the Statute aforesaid, and that
the said R. N. who prosecutes in this Behalf, as well for our
said

said Lord the King as for himself, may have a Moiety thereof, according to the Form of the Statute aforesaid, &c.

In an Information brought for buying Cattle, and selling them again in the same Market, the Judgment must be *quod capiatur* (that he may be taken), and not in *Misericordia* (in Mercy of the Court), because it is a Contempt, and punishable by Imprisonment. *Godb. 349.*

Information for buying of live Cattle, and selling them again within five Weeks.
5 & 6 Ed. 6. cap. 14.

Sussex, to **R.** N. who prosecutes, (&c. as in the other Information, to) informed, That J. S. late of H. in the said County of Sussex, on the twenty-first Day of November in the Year above-mentioned, and on divers other Days and Times between the said twenty-first Day of November and the Day of Exhibiting this Information at H. aforesaid in the said County, did buy of divers Persons yet unknown to the said R. N. who prosecutes in this Behalf, as well for our said Lord the King as for himself, twenty live Oxen, of the Price of four Pounds for each Ox aforesaid, and that the said J. S. did not keep and depasture the said live Oxen for the Space of five Weeks in his own House, on his Land, Farm, or in such Land where he had Herbage, or Common of Pasture, by Grant or Prescription, nor in any of them, but the said J. S. within the said Time last mentioned, at H. aforesaid in the said County, did sell the said twenty Oxen again alive, contrary to the Form of the Statute in such Case made and provided, whereby the said J. S. hath forfeited One hundred and eighty Pounds of lawful Money of Great Britain, that is to say, the double Value of the Cattle aforesaid, so by him bought and unlawfully sold again in Manner and Form aforesaid; wherefore the said R. N. who prosecutes in this Behalf, as well for our said Lord the King as for himself, prays the Advice of the Court in the Premises, and that due Process of Law in this Behalf be made against the said J. S. and that he the said R. N. who prosecutes in this Behalf, as well for our said Sovereign Lord the King as for himself, may have a Moiety of the said Forfeiture, according to the Form of the Statute aforesaid, &c.

Two Witnesses.

Note; To make these Informations conformable to the 15 Car. 2. the Time to be laid is (on such a Day) after the Feast of St. Michael the Archangel, in the fifteenth Year of the Reign of King Charles the Second, then King of England, &c.

Any

Any Person who feloniously drives away, or steals one or more Sheep or other Cattle, &c. or wilfully kills one or more Sheep or other Cattle, &c. with a felonious Intent to steal the whole Carcase or Carcases, or any Part or Parts of the Carcase, or is assisting or aiding the Person committing such Offence, shall suffer Death as a Felon without Benefit of Clergy. 14 Geo. 2. c. 6.

Doubts arising to what Sorts of Cattle besides Sheep this Act should extend, 'tis enacted by 15 & 16 Geo. 2. c. 34. that the said Act should extend to any Bull, Cow, Ox, Steer, Bullock, Heifer, Calf and Lamb, and to no other Cattle whatsoever.

Carriages. Vide Soldiers.

Carriers.

3 & 4 W. & M.
c. 12. f. 4.

THE Justices in *Easter Sessions* every Year may assess the Price of carrying Goods by Land by any common Carrier, and may certify to the Mayors and Officers of each Market-Town, the Rates, &c. to be hanged up in some publick Place.

Carrier taking above such Rates forfeits 5 *l.* to be levied by Distress, by Warrant from two Justices, where the Carrier doth reside, to the Party grieved.

7 & 8 W.
cap. 29. f. 3.

Carriages, on which Goods are carried for Hire, must not be drawn in any common Highway with above eight Horses, or eight Oxen and one Horse, or six Oxen and two Horses, or eight Oxen and four Horses in Pairs : Except Carriages employed in carrying

Ammunition,	{ Corn unthrash'd,	{ Hay,	} employ'd in it;
Artillery,	{ Coals,	{ Husbandry,	
Materials for Building,	{ Stones,	{ Service of the King,	} Timber,
	{ Straw,		

4 W. 3. c. 29.
f. 2, 3.

The Owner of a Waggon or Carriage forfeits 40 *s.* Two Thirds to the Use of the Highways, the other to the Informer, to be levied by Distress on any of the Horses ; which may be sold after three Days.

6 Ann. c. 29.
f. 3.

And by the 6 *Ann.* not with above six Horses, Oxen, or Beasts, on Forfeiture of 5 *l.* to be levied by Distress and Sale of any of the said Beasts, in three Days ; see also 9 *Ann.* cap. 18. and by the Statute 1 *Geo.* 1. cap. 11. not with above five Horses, &c. on the like Forfeiture.

By

By 5 Geo. 1. cap. 12. No Waggon travelling for Hire shall go or be drawn with more than six Horses, either at length, or in Pairs or Sideways, but shall forfeit all Horses above six, and all Geers and Bridles, to the Use of the Person seizing the same.

Nor any Cart with above three Horses, on Penalty of the like Forfeiture of all above Three. 5 Geo. 1. c. 12. Sect. 1.

The Horse or other Thing seized is to be delivered to the Constable till Proof be made before a Justice, who is to issue his Precept to such Constable to deliver such Horse, &c. to the Person who seized the same. See the Act.

A Warrant to levy the Penalty of 40 s.

To the Constable, &c.

Suffex, to **W** Hereas T. P. of, &c. in the County aforesaid, Yeoman, hath this present Day made Oath before me J. S. one of his Majesty's Justices of the Peace for this County, That S. A. of, &c. did upon the fifth Day of December last travel with a Waggon, of which he was then the Owner, drawn through the Parish of H. in this County in the common Highway, with nine Horses, contrary to the Statute in that Case made and provided; for which Offence he hath forfeited the Sum of 40s. These are therefore to require you forthwith to levy the said Sum of 40s. upon the Goods and Chattels of the said S. A. rendring to him the Overplus, if any shall happen to be, after reasonable Charges deducted for taking the said Distress, and the said Money, when levied, to dispose as followeth, that is to say, two third Parts thereof to the Surveyors of the Highways within your Parish, to be employed for and towards the Repair of the said Highways; the other third Part to the said T. P. for discovering of the same.

An Indictment against a Carman for Stopping of a Way.

Suffex, to **T** HE Jurors for our Sovereign Lord the King upon their Oath present, That J. A. late of, &c. on the nineteenth Day of November in the fifth Year, &c. with Force and Arms, at the said Parish in the County aforesaid, did unlawfully put and place, and cause to be put and placed a certain Cart in the common Highway there, called, &c. and voluntarily permitted the same so put and placed there, to remain for the Space of four Hours, at the Parish aforesaid in the said County, by Reason whereof the common Highway aforesaid, at the Parish aforesaid in the said County, for the whole Time

Carriers. Certiorari.

Time aforesaid, was straitned and stopped up, so that the Liege Subjects of our said Sovereign Lord the King then and there could not go, pass, and repass through and along the said common Highway, as they ought and used to do, to the great and common Nuisance of the Subjects of our said Sovereign Lord the King passing and repassing through the common Highway aforesaid, to the bad Example of other Offenders in the like Case, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

See more under the Head of **Highways.**

Certiorari.

A *Certiorari* is an Original Writ issuing out of Chancery or the King's Bench, directed in the King's Name to the Judges or Officers of inferior Courts, commanding them to return the Records of a Cause depending before them, that the Party may have more sure and speedy Justice before him or such other Justices as he shall assign to determine the Cause.

This is a Writ directed to the Justices of the Peace, issuing out of the Chancery, and then it is returnable, *in Cancellaria nostra* (in our Chancery); or out of the King's Bench, and then it is *nobis mittatis* (send to us); or out of the Common Pleas, and then it is *coram Justiciariis nostris de Banco* (before our Justices of the Bench); and the Justices must make a Return accordingly.

Yelv. 32.

It was formerly held, That if delivered after the Return-Day, yet the Justices ought not to proceed, because the Words of the Writ are *coram nobis, &c. & non alibi* (before us, &c. and not elsewhere). And it is still held, That it is a *Superfedeas*, by Reason of these Words, *Non alibi* (not elsewhere).

If delivered after the Jury were gone out to consider of their Verdict, it is too late, for it cannot be delivered after the Jury is sworn. *P. 9 W.*

And yet it will lie after Conviction and before Judgment, but this must be understood where a Writ of Error doth not lie.

Upon a Conviction of the Assizes, if the Judge doubt of the Judgment to be given, he may remove the Record into *B. R.* by *Certiorari*. *Mich. 2 Annæ.*

A *Certiorari* is seldom granted to remove Indictments found at the Assizes, but it may be granted for some Special Cause.

This

This Writ may be either to remove an Indictment, or the Tenour thereof, or a Recognizance, &c. And it removes the whole Record; and therefore no *Alias Certiorari* is to be allowed.

But it is not to be allowed, unless the Party indicted will be bound with Sureties (such as the Justices shall approve) to pay the Prosecutor such Costs and Damages as the Justices shall assess within a Month after Conviction. 21 Jac. c. 3.
f. 5, 6.

And these Bonds must be executed in the Presence of the Justices of Peace before the Allowance of the *Certiorari*, and the Justices may refuse allowing them unless satisfied of the Execution of the Security. *Trin. 5 Geo. 2. King and Heber.*

And by a later Statute, it is not to be granted in Term-time but upon Motion in Court; and the Party who desires it must find Bail, (*viz.*) 5 & 6 W. & M.
c. 11. f. 2.

Two Manucaptors before one or more Justices of the Peace in 20 *l.* to plead to the Indictment, and at his own Charge to procure the Issue to be joined, and to be tried at the next Assizes in that County where the Indictment was found after the Return of the *Certiorari*, if not in *London, Westminster* or *Middlesex*; and if in either of those Places, then the next Term after the *Certiorari* granted; and if such [†] Recognizance is not given before the *Certiorari* is allowed, they may proceed, though delivered. † Recognizance and *Certiorari* must be certified in *B. R.* and there filed; and the Name of the Prosecutor endorsed.
Sect. 3.

If the Party desiring the *Certiorari* be convicted, then *B. R.* may give Costs; and if not paid within ten Days after Demand, then upon Affidavit made of the Refusal, an Attachment goes, &c. and the Recognizance not to be discharged 'till Costs paid.

In Vacation any Judge in *B. R.* may grant it. He must endorse his Name, and the Name of the Party desiring it, and before the Allowance the Party must find such Sureties as aforesaid.

And by a subsequent Statute a Recognizance taken before a Judge of *B. R.* with like Condition, as in the former Act, which the Judge must mention on the Back of the Writ, and subscribe his Name, shall be as good as if taken before a Justice of Peace in the proper County. 8 & 9 W.
c. 30. f. 2.

When an *Appeal* lies to the Sessions, no Order shall be removed by *Certiorari*, till after the Appeal had; if it be, it shall be sent back by *Procedendo*.

The Commissioners who have Power to put the Act 9 Ann. c. 23. in Execution, may make By-Laws concerning Hackney Coaches and Orders, &c. and no *Certiorari* shall supersede Execution, or any Proceeding upon such Order; but Execution shall be had and made thereon, notwithstanding such Writ. 1 Geo. 1. c. 57.

The Condition of the Recognizance where the *Certiorari* is brought to a Justice of the Peace, and not to a Judge of *B. R.*

THE Condition of this Recognizance is such, That where as the above-bounden R. O. hath prosecuted a *Certiorari* returnable, &c. to remove into the King's Bench an Indictment found against him at, &c. for, &c. If therefore the said R. O. shall plead to the said Indictment so removed, as aforesaid, so as Issue may be joined upon the same; and shall likewise at his own Charge procure the said Issue to be tried at the next Assizes after the Return of the said *Certiorari*, to be held for the County of, &c. where the said Indictment was found; then this Recognizance to be void, &c.

The Return of a *Certiorari* endorsed on the Back of the Writ.

THE Execution of this Writ appears in a certain Schedule to the same Writ annexed.

The Schedule or Certificate of the Record, in a Piece of Parchment by it self, and filed to the Writ.

IR. B. Esq; one of the Keepers of the Peace, assigned to keep the Peace of our Lord the King in the said County of Suffex, and also to hear and determine divers Felonies, Transgressions, and other evil Deeds committed in the same County, by Virtue of this Writ to me delivered, do distinctly and openly under my Seal, certify the Indictment whereof Mention is within made, together with all Matters touching the same, into the * Chancery of our said Lord the King: In Testimony whereof I the said R. B. have put my Seal to these Presents. Dated, &c.

* Or into the King's Bench, &c.

Where it has been granted. Cinque Ports. Cro. Car. 252, 264, 332.

It was formerly doubted, whether it would lie to the Cinque Ports to remove an Indictment for Felony; but since it hath been granted to remove an Indictment out of the Court of *Romney*, upon a Suggestion, That the Defendant could not have an indifferent Trial before the Steward there, though it was insisted, that they had an antient Charter to exempt them from the Jurisdiction of *B. R.* and from Justices of *Oyer and Terminer*,

Terminer, and of Assize; but *per Curiam* (by the Court), a Charter of Exemption from the Oyer and Terminer was never heard of before. *Mich. 8 Will. Rex versus Bird.*

Certiorari's have been allowed to remove Indictments for Murder out of a County Palatine; for tho' the King hath granted them *Jura Regalia* (by his Royal Right), yet he did not thereby intend to exclude himself. *March 165.*

It has been granted to remove into *B. R.* an Indictment of Barretry taken before Justices of Peace in *Wales*, because it was at the King's Suit. *Poph. 144. Latch 12. 2 Cro. 484.*

But the later Authorities are contrary, for it hath been denied to remove an Indictment of Barretry found before the Justices of Gaol-Delivery, without some special Cause. *P. 6 W.*

It was denied, for removing a Conviction of Recusancy.

A Person was indicted at the Grand Sessions in *Anglesea* *Cro. Car. 332.* for *Petit Treason*; and notwithstanding the Statute of 26 *H. 8. c. 6.* which allows Indictments in Cases of Felony, to be inquired in the Counties adjoining, yet it was doubted, whether it should be granted or not, because the Indictment was taken in a *Welsh* County.

But now this Doubt is resolved; for it hath been granted in Case of Manslaughter and Murder, where the Indictments have been found in *Welsh* Counties. *1 Vent. 93, 146.*

'Tis true, eight Years after the Statute of 26 *H. 8.* another Act was made, which gave the Justices in *Wales* Power to hold Pleas in the Crown in as large Manner as the Chief Justice of *England* may do: But this is not a Repeal of the former Act; for though it gives them Power, *King & Morris 1 Mod. 68.* *34 H. 8. c. 26.* *it doth not exclude B. R.* without negative Words.

It was awarded to the Mayor and Justices of *Dover*, before whom an Indictment of Felony was taken, and not to the Lord-Warden, &c. because the Justices hold Plea by Virtue of their Commission of Peace, and not by their ancient Charters. *Cro. Car. 252, 264.* *Cinque Ports.*

Pending one Indictment for a forcible Entry, another was brought against the same Person for the same Force, &c. *Justices.* The first Indictment was removed, and the Justices awarded Restitution upon the Second; but before it was executed, a *Certiorari* was delivered to one of the Justices to remove the Second, who made some Delays till the Party had Restitution; and that Indictment being also removed, the Complainant had Restitution, and the Justice was reproved by the Court, because the Delivery of the Writ is a Prohibition to their Proceedings. *Yelv. 32.*

It may be awarded to remove Orders from an inferior Jurisdiction, where the denying it is not expressly enjoined by some Statute; as in Cases of Bastardy, the Act says, That the

Orders.

the two next Justices may take Order, &c. and no *Certiorari* is mentioned; which shews, that the Law-makers intended that such Order might be removed, otherwise they would have enacted that no *Certiorari* shall lie. 3 *Mod.* 95. *King against Plowright.*

Leet.
Trade.

It hath been awarded to remove a Presentment in a Leet upon the Statute of 5 *Eliz.* for using a Trade not being an Apprentice; for though the Statute of 31 *Eliz.* saith, That Informations upon Penal Statutes shall be brought in the proper County where the Offence was done; and in a later Paragraph of that Statute, it is enacted, All Suits for unlawful Games, and for not having Bows, &c. shall be prosecuted at the Assizes or Sessions of the County, or at the Leet, &c. and not elsewhere; yet this gives the Leet no new Jurisdiction, but such Offences only are intended, of which they had Cognizance before. *Sid.* 289.

Fine.

A Fine set by the Sessions upon the Grand Jury may be removed.

1 Salk. 151.
Nehuff's Case.

The Defendant was indicted at the *Old Baily* for a Cheat, in borrowing 600 *l.* of a Feme Covert, and promising to send her fine Cloth and Gold Dust above that Value for a Pledge, and instead thereof sent her coarse Cloth and no Gold Dust, and a *Certiorari* was granted, because it was not a criminal Matter; and the Defendant offered to try it that Term, which would be a Benefit to the Prosecutor; because by the Course of the *Old Baily* she could not try it so soon.

1 Salk. 149.
Queen & Porter.

The Defendant being convicted on an Indictment on the Statute 14 *Car.* 2. for beating certain Officers, obtained a *Certiorari*, and upon a Motion for a *Procedendo*, it was insisted that a *Certiorari* was not proper after a Conviction, because the Justices who tried the Fact were the most proper to set the Fine: But adjudged that a *Certiorari* lies after Conviction, because in some Cases a Writ of Error will not lie; it is true in this Case it will, because the Proceedings are grounded on an Indictment, and therefore the Party may bring a Writ of Error, for which Reason a *Procedendo* was granted.

Where denied.

'Tis not grantable after a Fine estreated in the Exchequer, because it then concerns the King, and cannot be removed without the Consent of the Attorney General. *Hardr.* 409.

Felony.

Nor to remove an Indictment of Felony out of an inferior Court without shewing some special Cause.

Excise.

It was denied to remove an Information before the Commissioners of Excise, because the Statute of 12 *Car.* 2. gives an Appeal to the Sessions, and a Clause that no *Certiorari* shall lie.

Forest.

It was denied for removing a Presentment before the Justices in *Eyre* for cutting of Wood in a Forest; for that would be to take away the Jurisdiction of those Justices who may

may punish Offences by the Forest-Laws, which are punishable elsewhere; the Party must first be convicted and fined. *Sid.* 296.

So it was denied to move a Presentment before Commissioners of Sewers, &c. The Party suggesting, That he ought not to repair the Sewer; because it may be tried before the Commissioners, as well as a Nuisance in a Court-Leet; but if the Party will make Oath that a Traverse was denied, then it may be granted.

It hath been a Question, If a *Certiorari* be delivered at a Privy Sessions. Privy Sessions, whether the Justices may not proceed, because the Statute saith, It must be delivered in open Sessions; which must be intended the General Quarter-Sessions.

It was denied to move an Order of Sessions for electing a Constable of a Constable, that the Order might be confirm'd by *B. R.* but the Court made a Rule for a *Mandamus* to swear him. *Style* 127.

It was denied to remove an Information exhibited in the Mayor's Court of London, against a Woodmonger, grounded upon an Act of Common Council, unless such Act appear to be against Law. *Style* 211.

The Record itself is not removed out of London, but *Tenorem* only; for by Virtue of their Charter, the Record remains there still; and therefore if there should be a Mistake in the Return, it may be amended; but it is a Question, Whether this may be done in any other County? And 'tis for this Reason that no *Alias Certiorari* will be granted, because the Record is removed in all other Places by the first Writ. *Sid.* 155, 230.

The Indictment was taken Jan. 25. and the *Certiorari* was of Michaelmas Term preceding; the Record was not removed. *Sid.* 317.

It is always denied to remove Indictments of Forgery or Perjury, *Sid.* 54. because when removed; seldom prosecuted.

The Overseers put a poor Boy to be an Apprentice; the Master upon Complaint to the Justices, That he was no Trader, but a Gentleman, had no Relief: Then he moved for a *Certiorari*, but it was denied; because the Overseers, with the Assent of the Justices, have Power to place an Apprentice upon any Person of Ability.

It was denied to remove an Indictment of Barrenry found at the Assizes, the Court declaring that it was never granted in such Cases, nor to the *Old Baily* without some special Cause. 1 Salk. 144.

Two Justices tendered the Oaths appointed by the Statute 1 Will. cap. 8. to Dr. Sands, which he refusing, it was certified into the Exchequer according to the Statute 7 & 8 Will. cap. 27. by the Judges of Assize, and upon a Motion for a *Certiorari* to remove this Conviction of Recusancy, it was

was denied ; because if granted, it might evade the Statute for when it is in *B. R.* it cannot be sent back again, and the Court cannot proceed against the Party ; it is true, it was granted in the Case of the Duke of York, being presented upon the Statute 3 Jac. 1. cap. 4. at the Quarter Sessions for not coming to Church ; but that was the only Case.

1 Salk. 147.
Regula generalis.

'Tis never granted to remove Orders of Justices, where an Appeal lies to the Sessions, before the Matter is determined upon the Appeal, and if an Order should be removed before the Time, then before it is filed, the Party may object against the *Certiorari*, and the Order shall be sent down again ; but after the Time of Appeal is expired, it is too late, and it may be removed.

3 Geo. 2. c. 19.
f. 1, 2.

By 3 Geo. 2. No *Certiorari* is to be allowed to remove any Orders made on Appeals (which the Justices are to determine according to the Merits, and are to amend any Defect of Form) unless the Party prosecuting such *Certiorari* shall, with sufficient Security, enter into a Recognizance in 50 *l.* Penalty to prosecute the same at his own Charge with Effect, and to pay the Party Cost within a Month if such Order is confirmed.

To prevent vexatious Delays and Expence occasioned by the suing forth Writs of *Certiorari*, to remove Convictions, Judgments, Orders and other Proceedings before Justices of the Peace, 'tis enacted, That no Writ of *Certiorari* shall be granted, issued forth, or allowed to remove any Conviction, Judgment, Order, or other Proceeding, had or made by, or before any Justice, or Justices of the Peace, &c. or the General or Quarter Sessions, unless such *Certiorari* be moved or applied for within six Calendar Months next after such Conviction, &c. so had or made, and unless it be proved on Oath, that the Parties suing forth the same, have given six Days Notice in Writing, to the Justice or Justices, or to two of them (if there be so many) before whom such Conviction, &c. was had or made, that the Justice or Justices, or the Parties concern'd may, if they think fit, shew Cause why such *Certiorari* should not be granted. 13 Geo. 2. c. 18. §. 5.

Return thereof.

Sewers.

A *Certiorari* was directed to the Commissioners of Sewers, and brought to their Clerk, who refused to allow it out of Court ; but the Commissioners ought to make the Return. *Mich. 8 Will. B. R. Style 90. contra.*

The Justices must return it, though Bail be not put in according to the Statute. *Sid. 70.*

The Return of a *Certiorari* was in Paper, and for that Reason held not good. *Mich. 4 Will. B. R.*

The

The Party cannot waive a *Certiorari* when it is once delivered, for then the Court will require a Return thereof. *Hill. Will. B. R.*

Certiorari was granted to remove all Orders against *A.* 1 Salk. 151.
and *B.* and the Order was made against *A.* alone; adjudged Queen &
that the Order was not removed. Barnes.

Certiorari to remove an Order against *W. R.* concerning 1 Salk. 145.
Foreign Salt, and it appeared by the Order itself, that it
was only about Salt without the Word *Foreign*: Adjudged
that the Order was not removed.

Certiorari to remove an Order, the Return was *cujus qui-* 1 Salk. 147.
tenor sequitur in hæc verba (whose certain Tenor follows Queen and Sr.
in these Words); it was quashed, because it should be *qui* Mary Devises.
videm ordo sequitur in hæc verba (which same Order follows
in these Words).

Challenge. See Juries and Misde- meanors.

THE proper Signification of this Word in the Law, is
to except against some who are returned of the Jury.
And this Exception or Challenge may be, either,

To the Array. }
To the Polls. }

A principal Challenge to the Array may be,

1. In respect of Partiality or Kindred in the *Officer* who
returned the Panel.

The Plaintiff challenged the *Array*, because the Sheriff
was *Cousin* to the Defendant, and in shewing how, it ap-
peared that he was *Cousin* to his Wife; but because it did not
set forth that he was a-kin to her *tempore panelli arraiati* (at
the Time of panelling the Array) it was not quashed, for he
might marry her afterwards. *Dyer* 38. Cro. El. 23.

2. If any Juror is returned at the Desire of the Party.

3. If either Party have an Action of Debt against the
Sheriff, but not *e converso* (but not on the contrary.)

In all these Cases, the whole Array must be quashed; but *Style* 233.
if one Man be sworn, the Array cannot be challenged.

1. *Propter honoris respectum* (for Respect of Honour), as Principal Chal-
if a Peer be returned of the Jury in the Case of a common lenge: to the
Person. Polls.

If a Peer is *Defendant*, there must be a Knight of the
Jury, or the *Array* may be challenged; but it hath been a
Question, If he is Plaintiff, and will not challenge, for that
there

Challenge.

there is no Knight returned, Whether the Defendant might do it: And it seems he may not. *Dyer* 107. b.

2. *Propter defectum patriæ libertatis* (for Defect of Freehold), as Aliens; *aut annui census* (or annual Value), and not having 40 s. by the Year.

3. *Propter affectum* (for Affinity).

4. *Propter delictum* (for Delinquency), as Persons attainted or outlawed.

This Challenge to the Polls, is a Challenge to the particular Persons.

And as to the second Cause, *viz. annui census* (or annual Value), it will not be unnecessary to know how much a Man ought to have to be a Juror by the antient Laws of this Realm.

Before a Statute was made concerning the Quality of a Juror, his Sufficiency was left to the Discretion of the Justices.

Afterwards by the Statute of 2 H. 5. c. 6. he was to have 40 s. *per Annum*, which by 27 Eliz. c. 6. was increased to 10 l. *per Annum*, either of Freehold or Copyhold.

Only in Corporations, Trials of Felonies may be by Free men worth 40 l. in Goods, though they have no Freehold *per* 23 H. 8. c. 13. and so the Law is in other Cases. *Raym.* 486.

3 G. 2.

And by the 3 Geo. 2. Persons having Land in their own Right of 20 l. a Year over and above the reserved Rent payable thereout, being held by Lease for 500 Years or more or for 99 Years, or any other Term determinable on Lives are qualified, and may be impanelled on Juries, in like Manner as Freeholders. And in the City of London being a Householder, and having Lands or personal Estate to the Value of 100 l. is by the same Act a Qualification to serve on Juries.

3. *Propter Affectum* (for Affinity).

As to this Matter there is a principal Challenge, when there is either express Malice or Favour; as if the Juror be of Kin to either Party, let it be never so remote; or if there be any Affinity by Marriage; nay if he be Godfather to either.

If he hath given a Verdict already in the same Cause, but then he must produce the Record, if he will conclude it as a principal Challenge.

But yet in the Case of the Regicides it was resolved, That if an Indictment is found against several, and some of them are found guilty by a Jury, and some of those Jury are returned to try the rest in that Indictment, it is no Challenge to say, That they have already given their Verdict against others who were indicted for the same Offence; because in Law it is a several Indictment against every one, and the Jury are to give their Verdict upon particular Evidence

against each Criminal ; and therefore it doth not follow, that because they have found one guilty, they will find the rest so too. *Keil. 9.*

This is very true, but it is a strong Presumption that all will be found guilty.

The Question was concerning a Way, and the Juror was challenged, because he had affirmed before the Trial, That there was a Way, and that it would be an Injury to the County, if it should be found otherwise ; and the Challenge was allowed.

Indictment in *B. R.* for a Battery committed at *Canterbury*, and one of the Jurors was challenged, because he had been of the Grand Jury who found the Battery ; and it was allowed.

It was likewise allowed, because the Prosecutor had been entertained at the House of a Jury-man. *1 Vent. 309.*

These Challenges to the Favour are many, which must be left to the Discretion of two Triers, who are sworn by the Court out of the Jury returned to try whether there is any Cause of Favour or not.

Their Oath is, *ff. You shall well and truly try whether B. (the Jury-man) stand indifferent between the Parties to this Issue.*

If a Juror is served with a *Subpœna* as a Witness on either Side, or hath declared how he will find his Verdict, or for whom, these are good Challenges to the Favour. *1 Bulst. 121.*

But he shall not be examined to any Matter Criminal or infamous of himself, in Order to challenge him.

There can be no Challenge, either to the Array, or to the Polls, till the Jury is full, and that as well by a *Tales*, as if all on the principal Panel appear ; and 'tis too late after they are sworn. *Hob. 233.*

In an Appeal of Manslaughter, a Man may challenge twenty Persons peremptorily, as well as upon an Indictment of Murder ; 'tis true at Common Law a Man might have challenged any Number peremptorily under three full Juries, and therefore he might challenge thirty-five without shewing any Cause ; and if he challenged more, he was to be hanged : But by the Statute of 22 *H. 8.* 'tis now reduced to twenty ; and if he challenge more, there is no Penalty ; but the Court is to over-rule the Challenge.

Only in Case of Treason and Petit Treason, he may challenge thirty-five, *per 1 & 2 Ph. & Mar. c. 10.*

Two were arraigned for a Robbery, and they severally pleaded, Not guilty ; a *Venire facias* was returned, they both challenged Three of the Jury ; then one of the Robbers challenged the Four next in the Panel peremptorily, but the other did not join in that Challenge ; and those Four were

Sid. 244.

* *Yelv. 3.*

What Number may be challenged.

Moor 12.

Dyer 152. b.

Challenge. Champerty.

sworn of his Jury, and found him guilty: And since there was but one *Venire facias* the Question was, Whether a Juror could be withdrawn and allowed in one and the same Panel? And it was held he might; for no Judgment was given that he should be withdrawn, but that he should set aside for a while; for probably the Party might release his Challenge by Consent of the Attorney General.

A Man challenged thirty-six, and it was formerly held, That he should be prest, because he refused the Law: This being not a satisfactory Reason, 'tis now held, That he shall be hanged.

**The Form of a Challenge to the Array,
because the Sheriff who returned is of
Kindred to one of the Jury.**

AND upon this the said T. P. challenges the Array of the said Panel, because he says that That Panel was arrayed by one J. L. late Sheriff in the County aforesaid, of Kin to the said J. O. to wit the Son of D. the Sister of B. Mother to the said J. O. and prays on the Allegation aforesaid, that that Panel may be quashed, &c.

**Where the Challenge is for that the Pa-
nel was returned at the Instance of ei-
ther Party.**

AND upon this — &c. late Sheriff of the County aforesaid, at the Nomination of the said J. O. and in his Favour; which said Challenge by Triers thereof sworn is found true.

Champerty.

'TIS an Offence, viz. where any Person expecting Part of the Thing in Variance, doth by himself, or any other, move or prosecute the Suit at his own Costs and Charges. The Punishment is a Fine, and Imprisonment for three Years.

2 Inst. 208.

1 Inst. 308. b. |

My Lord Coke tells us, That *Champerty* is *Maintenance*, but not *Converso*; so that the Difference between these Offences

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ences seems to be thus: *Champerty* is where the Party prosecuting is to have Part of the Land or Goods, &c.

Maintenance is where the Prosecutor is to have no Part of the Thing in Variance. 32 Hen. 8. c. 9. §. 3.

An Indictment for Champerty.

Suffex, to **T**HE Jurors, and so forth, That whereas by the writ, Common Council of the Kingdom of the King of England it is provided, That no Officer of our Sovereign Lord the King, nor any other shall maintain Pleas, Suits or Matters depending in the King's Court, for Lands, Tenements, or other Things whatsoever, to have Part of the Thing in Variance, or other Profit by Covenant made for that Purpose, nor shall any under such Covenant give up his Right to another, as in the said Statute is fully contained. Nevertheless one J. O. on the 15th Day of December in the fifth Year of the Reign, &c. at Lewes in the said County hath undertaken to maintain, and hath maintained * a certain Plea of a Suit (which was depending in the King's Court, before the King himself, by a Writ of our said Lord the King between T. P. and J. S. in a Plea of Debt for thirty Pounds, which the said T. P. demanded of the said J. S. to have Part of the Debt and Damages recovered in that Suit, that is to say, to have Half of the Fine and Damages, by Covenant made between the said J. O. and T. P. against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and against the Form of the Statute aforesaid in such Case made and provided.

* If in Chancery, then say, A certain Matter, which was depending before our Sovereign Lord the now King in his Chancery at Westminster in the County of Middlesex, by Writ of our Sovereign Lord

the King, of Subpoena between, &c.

An Indictment for Maintenance.

Suffex, to **T**HE Jurors, and so forth, That J. O. of, &c. writ, Yeoman, on the first Day of December in the fifth Year of the Reign, &c. at Lewes in the said County hath maintained and supported a certain Suit, which is depending in the Court of our Sovereign Lord the now King before the King himself between T. P. Plaintiff, and R. B. Defendant of a Plea, that he the said R. do render to the said T. fifty Pounds, which he owes him, and unjustly detains from him, on the Behalf of the said R. B. to the manifest Delay and Disturbance of Justice, and in Contempt of our said Sovereign Lord the now King, and to the Damage of the said R. B. and against the Form of the Statute in such Case made and provided, and

against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Chance-medley. See Homicide.

Cheats. See Counterfeits.

Church and Church-yard.

ANY Man may build a Church or Chapel, but the Law takes no Notice of it as such, till it is consecrated; and therefore whether Church or Chapel, it must be tried by the Certificate of the Bishop; which being done, the Parishioners ought then to repair it, and to keep up the Enclosures and Fences round it.

If a Question should arise, Whether 'tis *Ecclesia* or *Capella* (a Church or Chapel) belonging to the Mother-Church, and any Proof can be made that Sacraments have been administered in the Chapel, and the Dead buried there, then 'tis accounted a distinct Church by the Law.

When 'tis built, neither the Ordinary or Church-warden can give Leave to bury there, but the *Parson* only, because the Freehold of the Soil is in him.

Inst. 177.

Among the Laws of King *Ina*, this was one, That he who fought in a Church should forfeit 120 s. And by some subsequent Laws, he who is convicted of striking with a Weapon there, shall have one of his Ears cut off; and if he hath no Ears, shall be burned in the Cheek with the Letter *F*. which is for Fighting. 5 & 6 Ed. 6. c. 4.

Palm. 344.

A Man was indicted at the Sessions in *Gloucester*, for striking with a Weapon in the *Church-yard*; it was removed to *B. R.* and moved that he might be admitted to a Fine; which was denied, because the Statute appoints another Punishment as well as a Fine, viz. Loss of an Ear, &c. and therefore he ought to traverse the Indictment.

Penhallo's Case
Cro. Eliz. 231.
2 Leon. 138.

Another was indicted upon the same Statute, for drawing his Sword in the *Church*, but it did not set forth that it was with an *Intent* to strike; and though it concluded *contra formam Statuti* (against the Form of the Statute), yet it was held void, for the Reason above-mentioned.

Noy 171, 172.

So where 'tis set forth *quod percussit* (that he struck), if the Word *malitiose* (maliciously) is omitted, 'tis nought. Noy 171, 172.

But an Indictment and Outlawry thereon is not such a Conviction as to inflict the corporal Punishment aforesaid.

An

An Indictment for striking with a Weapon
in a Church-yard.

Suffex, to **T**HE Jurors, and so forth, That J. O. of, &c. 5 & 6 Ed. 6.
 wit, on the 19th Day of December in the fifth c. 4.
 Year of the Reign, &c. with Force and Arms at H. in the
 said County did maliciously draw his Sword in the Church-yard
 of the Parish Church of H. aforesaid, upon one R. N. of H.
 aforesaid, Yeoman, and with the said Sword then and there did
 strike the said R. N. in the Church-yard aforesaid, against the
 Peace of our said Sovereign Lord the King, his Crown and Dig-
 nity, and contrary to the Form of the Statute in such Case made
 and provided.

To keep Fairs or Markets in Church-yards, is fineable.

A Justice of Peace cannot impose a Tax for Repair of a
 Church. 1 Mod. 194. Rogers and Davenant.

See the Act 13 Geo. 1. c. 35. for establishing a Provision
 for maintaining the Curate of St. Katharine Creechurch, Lon-
 don, &c. whereby the City Justices are impower'd to take
 Oaths, grant Warrants, &c.

And the Stat. 1 Geo. 2. Sess. 2. c. 15. for making Pro-
 vision for the Rector of the New Church, near the Milbank,
 in the Parish of St. Margaret Westminster.

And several other later Acts for other Churches since built.

See also Tit. Common Prayer and Dissenters.

Church-wardens.

Church-wardens are Officers instituted for the Benefit and
 Advancement of Religion; to suppress Prophaneness and
 Immorality, and see that the publick Worship is performed
 with due Decency and Reverence: They are likewise look'd
 upon as Temporal Persons, and as a Lay Corporation they
 are vested with a Temporal Right in their Offices, and may
 take Goods for the Benefit of the Church, but not Lands;
 they have a special Property in the Goods belonging to the
 Church.

They are to be chosen by the Canon, * Jac. 1. by the
 joint Consent of the Minister and the Parishioners; and if

chooses one Church warden in some Places, but by Force of a Custom, which
 Custom is triable at Common Law.

* Ann. 1604.

Nor is it by
 Force of the
 Canon that
 the Parson

they

they disagree, then the Minister is to chuse one, and the Parish another every Year in the *Easter* Week, unless there is a Custom to the contrary, which must be observed. 2 *Rol. Abr.* 287. P. 50.

1 Vent. 266.

2 *Rol. Abr.*

287. f. 1.

Palm. 50.

When he is chosen by Virtue of any Custom, though against the Canon; yet if the Archdeacon refuses to swear him, a *Mandamus* will lie to compel him to it. And if the Archdeacon should refuse one who is chosen, and appoint another against the Consent of the Parish, *B. R.* will grant a special Writ to the Bishop to swear him, *vel causam significare quare non* (or to shew Cause why not).

If the *Mandamus* be to swear them, setting forth that they were chosen generally, then a Return generally that they were not chosen, is good; but if it sets forth that they were chosen *debito modo* (in due Manner) then to return generally that they were not chosen, is ill; for it must set forth specially that they were not chosen *debito modo* (in due Manner).

Carth. 393.

Comb. 417.

1 *Raym.* 138
King and Martin Rice.

Mandamus to an Archdeacon to swear a Church-warden, returned, that he was *Pauper & minus habilis*, being a poor Dairy-Man; and thereupon a peremptory *Mandamus* was awarded; for a Church warden is a temporal Officer, intrusted with the Parish Goods, and the Parishioners may chuse and put in Trust whom they think fit, for 'tis at their Peril. *H. 8 W. 3.* 1 *Salk.* 166. 5 *Mod.* 325. S. C.

Who may not be a Church-warden.

An Attorney cannot be made a Church-warden; and if he is sued in the Spiritual Court, being chosen to that Office, he may have a Prohibition. 2 *Rol. Abr.* 272.

His Duty about profaning the Sabbath.

He is to see that the Parishioners come to Church every *Sunday* and Holiday, and to present the Names of such who are absent, to the Ordinary, or to levy 12 *d.* for every Offence, *per Stat.* 5 & 6 *Ed. 6. c. 4.* 1 *Eliz. c. 1.*

If he find any in an Ale-house, &c. the Person is to forfeit 3 *s.* 4 *d.* and the Master of the House 10 *s.* 1 *Jac. 1. c. 9.* 4 *Jac. 1. c. 5.*

Of Lands and Goods of the Church.

Vide 2 *Brown* 215.

* But they may recover such Goods by a Bill in Equity.

1 *Rol. Abr.* 393.

They are a Corporation only as to Moveables, viz. to take Goods, but not Lands, for the Use of the Church; for they cannot prescribe by the Name of Church-wardens to have Lands, &c. neither can they have any Action at Common Law to recover Goods of which they were never * possessed: But if once they had Possession, then they may have an Action of Trespass, &c. and recover Damages to the Use of the Parish, if such Goods are taken away or abused; and they may have an Appeal of Robbery, if stolen; but they cannot sell such Goods or dispose of them without the Assent of the Parish; if they do, the Parishioners may chuse new Officers, who may bring an Action of Account against them.

If any Thing belonging to the Freehold is broken or cut down, or the Walls, Windows, Doors or Trees in the Church-

Church-wardens
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Church-yard, &c. the Parson or Vicar, and not the Church-wardens, shall have an Action.

But the Church-wardens may maintain an Action for defacing a Monument in the Church. Godb. 279.

And so may the *Heir by Descent* have the like Action against any one who beats down or defaces *Coats of Arms*, or Monuments in the Church or Church-yard. 2 Cro. 367. Frances and Sea.

An Action of Account was brought by the Church-wardens against their Predecessors for a Bell, in which they declared, *Quod reddant eis computum de bonis Ecclesiæ* (that they render to them an Account of the Goods of the Church); it should have been *de bonis Parochianorum* (of the Goods of the Parish); for which Reason the Court inclined that the Declaration was ill. 1 Vent. 89. 1 Mod. 65.

If the Minister is disturbed, the Punishment is three Months Imprisonment without Bail, per 6 Ed. 6. cap. 4. Disturbance in the Church.

To disturb in Church, Chapel, (or Congregation, permitted by the Statute of 1 W. & M.) or to misuse the Teacher, must find two Sureties to be bound in Recognizance in 40 l. and in Default thereof may be committed till next Quarter-Sessions; and upon Conviction there, forfeits 20 l.

Proof by two Witnesses before a Justice of Peace.

Going or returning from Church, may be punished by Indictment, or bound to Good Behaviour: The Offence is the same if a Layman be arrested. Quarrelling in Church or Church-yard, if a Lay-man, may be suspended *ab ingressu Ecclesiæ* (from entering the Church); if a Clergy-man, *ab Officio* (from his Office). But if a Weapon is drawn with an Intent to strike, or Stroke given, the Party may be convicted at Sessions by Verdict, his own Confession, or Oath of two Witnesses, and Judgment to lose one of his Ears by cutting it off; and if no Ears, to be marked in the Cheek with the Letter F. 5 & 6 Ed. 6. cap. 4. Arresting a Minister.

To apprehend those who disturb the Minister, &c. and to bring them before a Justice of Peace. Wherein they have an Authority equal with other Officers.

They are to present those who sit *Tippling*, &c.

They are to execute Warrants against such who *profane* the Lord's Day, and may levy the Forfeiture of 12 d. by Warrant from a Justice, &c. on those who curse or swear.

They are to join with the *Constables* in making *Rates* for Relief of the Poor, &c. and in chusing Surveyors of the Highways, and appointing Days to work. Wherein they are to be join'd with others

They are to account at the End of the Year, and to deliver what remains in their Hands, to the new Church-wardens by a Writing indented; if they refuse, they may be presented at the next Visitation, or the new Officers may have an Action against them. Account.

If he is cited in the Ecclesiastical Court after he hath delivered up his Account, and be excommunicated, an Action Raym. 418.

Union of
Churches.

tion on the Case lies against him at whose Prosecution he was cited.

At Common Law, by the Concurrence of the Parson, Patron, and Ordinary, *Churches* might be united, but not *Parishes*; and such Union was of Spiritual Cognizance till the Statute 37 H. 8. cap. 21. and then the Temporal Courts had Jurisdiction, but the Tithes and *Modus* continue after the Union.

If they are situate in a Corporation, then they may be united by the Mayor, Justices, or the greater Part of the Parish, with the Consent of the Patron, and by the Bishop of the Diocese. 17 Car. 2. cap. 3.

And the Parishioners of the Church united are bound to contribute to the Repairs and Ornaments of the Church to which they are so united. 4 & 5 W. & M.

In Prohibition to a Libel for a Rate assessed by the Church-wardens by Custom for the Repair of the Church, as well the Chancel as the Nave of the Church, It was resolved, first, That the Parishioners and not the Church-wardens ought to assess the Rate. 2. That the Parson ought to repair the Chancel, and not the Parishioners, but that the Parishioners ought to repair the Nave of the Church: And by Holt, C. J. by the Canon Law, the Parson ought to repair the Whole; but by the Custom of *England* the Parson shall repair the Chancel, and the Parishioners the Nave of the Church; and by the Custom of *London* the Parishioners shall repair the Chancel also. But *Rokeby*, Just. was of Opinion, that the Parishioners ought to contribute to the Charge of the Ornaments of the Chancel. But Holt doubted of that; then it was moved that a Prohibition should be granted, only *quoad* the Suit for the Rate for the Chancel. But resolved, that the Prohibition shall be for the Whole, because it is but one Rate and intire; but if a Man libel for two distinct Things, the one of which is of Ecclesiastical Conusance, and the other not, a Prohibition shall be granted *quoad* that which is of temporal Conusance; and they of the Court Christian shall proceed for the other; therefore a Prohibition was granted. *Pense and Prouse*, 1 Raym. 59.

Sears in
Churches.

The Ordinary hath a proper Jurisdiction over them, and may place and displace whom he thinks fit: But where Custom or Prescription interposeth, there his Jurisdiction ceaseth, and the Temporal Courts give Remedy in Cases of Disturbance, &c.

But such a Prescription is not good exclusive of the Ordinary, for his not acting for many Years may be because there was no Occasion; which can never vest a Right in the Church-wardens, who are only a Corporation capable of Goods, but not of Inheritance.

A Man

A Man may have a Seat in a Church appendant to his House, and may prescribe, that he and all those whose Estates he hath, &c. usually sat there and repaired the Seat, and in such Case a Prohibition lieth; but one cannot prescribe to a Seat in the *Body of the Church* generally, without shewing that he and all those, &c. have, Time out of Mind, repaired it. *Roll. Abr. 2 Part 288.*

The Case is the same in an *Isle of a Church*, for such a Prescription to repair the *Isle*, and to sit there with his Family, makes the *Isle* peculiar to his House, and he cannot be displaced by any Body; but Sitting and Burying there without *Repairing*, doth not make it so. 2 Cro. 367.

But the Ordinary hath no Power over Seats in private Chapels belonging to particular Families. *Roll. Abr. 2 Part 288.*

Are to be made by the Church-wardens, and greater Part of the Parishioners present, after a general Notice given for that Purpose, and not by the Church-wardens alone. Taxes for Repairs. *5 Rep. 67. 1 Vent. 367.* And a Rate made by the Majority present shall bind the Church-wardens voting against it. *Compl. Incumb. 389.*

The Charge is in respect of the Lands; and therefore if the Owner lives in another Parish, he shall be rated to repair in the Parish where the Lands lie, unless he let it by Lease, and then he shall be charged in respect of the Rent reserved thereon.

And in such Case, if the Lessee or Farmer is sued for Repairs, (as he may) because the Church-wardens may not know who is Landlord, such Lessee may plead to the Libel, That he is only the Farmer; which appearing to the Court, the Tax shall be divided between his Landlord and him; that is, The Landlord shall contribute in Proportion to the Rent reserved, and the Tenant for so much as the Land is worth above the Rent, for Lands are not usually let at the utmost Rent. 2 Roll. Rep. 270.

A Man had a Lease of a Stall in a Market-Town, where he sold Goods once a Week, but lived in another Parish, he shall not be charged in the Market-Town. *2 Roll. 228.*

A Person living in one Parish, and occupying Lands in another, shall not be charged for the Ornaments of the Church where the Lands are, because the Inhabitants only are to be charged for Ornaments in Respect of their Personal Estates. *2 Rol. Abr. 291.*

The Majority of the Parishioners at a Meeting, may make a Rate to oblige the whole Parish for altering the Place of the Communion-Table, and carrying it into the Chancel, and for raising the Ground to go up Steps to it, for they are compellable to put Things in decent Order; and there is no Rule for the Degrees of Decency, but the Judgment of the Majority of the Parish.

But

But the Majority cannot make a Rate to bind the rest for repairing or adorning the Chancel, because that is the Freehold of the Parson.

A Man living in one Parish, and occupying Lands in another, may be taxed towards the *new casting the Bells* of the Parish where his Lands are; for they are more than *Ornaments*, they are necessary to the People.

Those of a *Chapelry* may prescribe to be exempt from *repairing* the Mother-Church, having always buried and christened within themselves; for in such Case the Chapel shall be intended to be co-eval with the Church, and not built since for their Ease.

If there is a Chapel of Ease, which one Part of the Parish hath always used to repair, and to hear divine Service there, but bury at another Church, they must contribute to repair that Church.

If the Parish is unequally rated, those who are grieved must plead it in the Spiritual Court, being sued there; but they cannot have a Prohibition. *2 Rol. Abr. 291.*

Presentments.

Are usually made twice a Year, whereof one Time is to be a Week after *Easter*, when the old Church-wardens are to leave their Office, and the new ones are to be sworn; which they are not to be, till the other have given in their Presentments; and if they refuse, the Parson or Vicar may present, &c. They cannot be compelled to present oftner than once in a Year, except at the Visitation of the Bishop, and the Register is to receive but 4 s. for every Presentment.

The Spiritual Court tendered an Oath to a Churchwarden, to present according to the Articles of the Bishop, in which were many special Things, as to present filthy Talkers, &c. and a Prohibition was granted. *1 Vent. 124.*

But if the Oath tendered had been to present according to the Ecclesiastical Laws, and the Articles are only offered by Way of Direction, in such Case a Prohibition ought not to go. *1 Vent. 127. Hardres 364.*

The Articles commonly exhibited to them to make their Presentments, may be reduced thus:

Viz. To Things which concern } The Church,
The Parson,
The Parishioners.

And first, To those Things which concern the Church; as

Alms, whether a Box for that Purpose.	Bells and Bell-ropes, if in Repair.
Assessments, whether made for Repairs.	Bible, whether in Folio.
	Canons, whether Book thereof.

Carpet
Chest
Church
paid
Church
Comm
Comm
Comm
Creed
Cups
&c.
Cushion
Desk f

Articles
Year
Baptizin
Canons,
Catechi
Comm
Dead, i
Doctrin
Gown, i
Homilies,
January

3.

Adultere
Alms-hou
Ale-hou
Service
Answerin
brick.
Baptism n
Blaspheme
Church, i
Dead, if
ried.
Drunkard
Fornicator
Legacies, i
Uses.
Marrying
Degrees.

Carpet.	Flaggon.
Chest with three Locks.	Font.
Church and Chancel in Repair.	Grave-Stones well kept.
Church-yard well fenced.	King's Arms set up.
Commandments in fair Letters	Lord's Prayer in fair Letters.
Common Prayer-Book.	Marriage, a Table of Degrees.
Communion-Table.	Monuments safely kept.
Creed in fair Letters.	Parsonage House in Repair.
Cups and Covers for Bread, &c.	Register-Book in Parchment.
Cushion for Pulpit.	Surplice, whether any.
Desk for Reader.	Table Cloth.
	Tombs well kept.

2. Those Things which concern the Parson.

Articles 39, if read twice a Year.	May 29th, if observed.
Baptizing with Godfathers.	Marrying privately.
Canons, if read once a Year.	November 5th, if observed.
Catechising Children.	Preaching every Sunday.
Common Prayer, if read, &c.	Peace-maker.
Dead, if he bury them.	Perambulation.
Doctrine, if he preach good.	Sacrament, if celebrated.
Gown, if he preach in it.	Sedition, if vented.
Homilies, if read, or he preach.	Sick, if visited.
January 30th, if observ'd.	Sober Life.
	Surplice, if wear it.

3. Those Things which concern the Parishioners.

Adulterers, if any.	Marrying without Banns, Licence, or at unlawful Hours.
Alms-houses, if abused.	
Ale-houses, &c. in Divine Service.	Sacraments received three Times in a Year, of all above sixteen, whereof <i>Each</i> to be one Time.
Answering according to Rubrick.	School, if abused.
Baptism neglected by Parents.	Seats, if Parishioners are placed in them without Contention.
Blasphemers.	Standing up.
Church, resorting to it.	Sundays, working thereon.
Dead, if brought to be buried.	Swearers, if any.
Drunkards, if any.	Women, if come to be church-ed.
Fornicators, if any.	
Legacies, if any given to pious Uses.	
Marrying within prohibited Degrees.	

Church-wardens. Clergy.

A Church-warden was indicted, for that he, *Colore Offici sui, corrupte & extorsive* (by Colour of his Office corruptly, and by Extortion) took a Silver Cup of S. S. for making him a *Gallery-keeper* in St. Martin's Church: It was moved to quash this Indictment, because it was no Office, but an *Employment* under a Church-warden; and to make a Present for such an Employment, is no Offence; but it was ordered to be tried, whether the Cup was taken *corrupte & extorsive*?

A Warrant against one for not coming to Church.

To the Constable, &c.

Suffex, to **W** Hereas Oath hath been made before me, That wit, J. O. of, &c. did not upon the Lord's Day last past resort to any Church, Chapel, or other usual Place appointed for Common Prayers, and there hear Divine Service according to the Form of the Statute in that Case made and provided: These are therefore to require you, &c. to bring the said J. O. before me to answer the Premises. Given, &c.

Vide plus in Titulo Dissenters and Divine Service.

Clergy.

ALL that seems necessary under this Title is to shew where or in what Cases Clergy, or rather the Benefit of the late Statute, shall be allowed, or not.

Who shall have the Benefit of it at Common Law.

And first at Common Law: All Offenders whatsoever, except in Treason against the Person of the King, & *toties quoties*; but by the Statute of 25 Ed. 3. cap. 4. it was prohibited in Treasons; and by that of 4 H. 7. it is restrained to one Time, and no more.

So that now there are but very few Cases wherein the Common Law denies Clergy; but in many it is taken away by several Acts of Parliament.

In what Cases it is taken away by Statute.

'Tis a Rule in Law, That where a Statute creates a new Felony, the Offender shall have his Clergy, unless it is expressly taken away by that or any other subsequent Act.

And 'tis said, Clergy shall be allowed in all Cases, saving such as are mentioned 1 Ed. 6. cap. 12. or particularly taken away by express Words in any Statute made since.

Now the first Law which made a new Offence, and took away Clergy from the Offender, was the Statute of 7 H. 7.

1. which made it Felony for a Soldier to depart from his Colours without License; and before that King's Reign, there was no Law to take away Clergy in Cases of simple Felony.

'Tis farther to be observed, that where-ever Clergy is taken away by a particular Statute, the Offence laid in the Indictment must be brought within that very Statute; otherwise the Offender shall have Clergy.

As if he be indicted upon the Statute of 8 *Eliz. c. 4.* for picking a Pocket *privily*, &c. the Words *clam & secreète* (privily and secretly) must be inserted.

Accessary. — Before the Fact, in Petty Treason, Murder, &c.

Imbeziling Ordinance, Munition or Victuals; Value 20 s. for War; 31 *Eliz. c. 4.* Or Naval Stores, Value 20 s. &c. 22 *Car. 2. c. 3.*

Acknowledging, or procuring to be acknowledged, any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, Judgment in the Name of another not consenting or privy. 21 *Jac. cap. 26.*

Bankrupt, or any other Person by his Order, Consent or Privy, removing, concealing, destroying or imbezilling any Goods, Monies, or Effects, whereof he or any Person in Trust for him, was possessed or entitled, to the Value of 20 l. or any Books of Accounts, Bonds, Bills, or other Writings relating thereunto, with an Intent to defraud his Creditors; and being convicted thereof shall be a Felon without Benefit of Clergy. 5 *Geo. c. 24.* See also 5 *Geo. 2.*

In Fair or Market, any Body being in it. 5 & 6 *Ed. 6. c. 6.*

In Day-time, and taking to the Value of 5 s. 39 *Eliz. c. 15.* Vide Robbery.

One *Evans* went into a Chamber in the *Inner Temple* thro' the Window, and took 40 l. and *Finch* was upon a Ladder on the Outside of the Chamber at the same Time, and in View of the other; now tho' they were both Principals, yet since Clergy was taken away by the Statute 29 *Eliz.* from such as enter and take away; and since *Finch* did not enter, he had Clergy. *Cro. Car. 417.*

Mother concealing the Birth. *Anno 21 Jac. c. 27.*

— 23 *H. 8. c. 1.* Vide 5 *A. c. 6.* Tit. Burglary.

— 5 *Eliz. c. 7.* 3 & 4 *W. c. 9.*

Burning.

Burning. } Houses or Barns full of Corn. 23 H. 8. c. 1.
 25 H. 8. c. 3. 43 Eliz. c. 13.

For burning Houses, or Barns full of Corn, Clergy taken away by the Statute 23 H. 8. c. 1. and for several other Offences therein mentioned.

Afterwards, by the Statute 1 Ed. 6. c. 12. Clergy is taken away for the same Offences which are mentioned in the Statute of 23 H. 8. But burning of *Dwelling-houses* is omitted in this last Statute, which is, That in all other Cases of Felony, except those therein mentioned, Clergy shall be allowed; and because Burning, &c. was not mentioned therein it was the Opinion of Justice Staundford, That the Principals should have his Clergy, and Anno 25 Eliz. he had it accordingly.

Challenge of Jurors. } Above twenty, or do not directly answer,
 & 4 W & M. if the Indictment be for
 such an Offence for which Clergy is not
 be allowed, if convicted by Indictment
 Confession. 1 Anna, c. 9.

Conjuration. } Convicted thereof, or of Witchcraft, &c.
 See 9 G. 2. c. 5. which repeals it. } kill, consume or lame any Person, under
 taking to tell where Goods lost or stolen
 may be found, or to provoke any unlawful
 Love, or to destroy or hurt Cattle, or
 Goods or Persons; first Offence, Imprisonment
 for a Year without Bail, or once in a Quarter
 of that Year, must stand six Hours in the Pillory
 in some Market Place, &c. second Offence is Felony
 without Clergy. 1 Jas. 1. c. 12.

Debentures. } Debentures made knowingly or fraudulently
 or Altering or Counterfeiting them; or
 judged Felony, and the Offender shall suffer
 Death without Benefit of Clergy. Geo. c. 14.

Egyptians. } Transported here, and staying above a Month
 1 & 2 Ph. & M. c. 13.
 Any consorting with them above a Month
 and above fourteen Years of Age. 5 Ed. c. 20.

Exchequer-Bills. } Exchequer-Bill, Forging or Counterfeiting
 or any Endorsement thereon, or tendering
 Payment such forged Bill, or demanding
 to have it changed for ready Money at
 the Bank, or by any Receiver or Collector.

Exchequer
Bills.

Forgery.

Bank-

Stamps.

South-Sea
Bonds.Lottery
drawers.

Bills.

Stamps.

Horse-stealing.

Maiming.

Maid.

Murder.

Murder.

Outlawry.

Northumberland.

Outlawry.

- Exchequer-Bills. } tor knowing it to be forged, or with an Intent to defraud; and being convicted thereof, shall be a Felon without Benefit of Clergy. 7 & 8 Will. c. 31. par. 78. 6 Geo. c. 4.
- Forgery. — Second Conviction. 4 Eliz. 14.
- Bank-Bills. — 8 & 9 Will. c. 19.
- Stamps. { 9 & 10 W. c. 25. par. 59. or 6 Geo. c. 21. par. 60. 6 Geo. c. 4.
- South-Sea Bonds. { 9 Annæ, c. 21. 6 Geo. c. 4. par. 56.
- Lottery-Orders. { 12 Annæ, c. 2. 5 Geo. c. 1.
- Bills. { For Assurance of Ships. 6 Geo. c. 18. par. 13.
- Stamps. { On Cards, Dice, Linen, Silks and Leather. 9 Annæ, c. 11. c. 23. 10 Annæ, c. 19. 5 Geo. c. 2. 6 Geo. c. 21. par. 60.
- Horse-stealing. { 1 Ed. 6. c. 12. 3 Ed. 6. c. 33. These Statutes mention only the Principal Horse-stealer, and therefore the Accessary shall have Clergy. Dyer 99. See 31 Eliz. c. 12.
- Maiming. — Person maliciously. 22 & 23 Car. 2. c. 1.
- Maid. { Taken away, having Lands, &c. 3 H. 7. c. 2. Vide Women.
- Murder. { 23 H. 8. c. 1. But the Person must be found guilty; for if he was outlawed, he might have Clergy, notwithstanding the Act.
- Murder. { This Defect was remedied by 25 H. 8. but still the Law was not compleat, because those Statutes did not extend to a Person confessing the Fact; and therefore it was remedied by 1 Ed. 6. c. 12.
- Outlawry. { For an Offence not within the Benefit of Clergy. 3 & 4 W. cap. 9.
- Northumberland. { Notorious Thieves* and Spoilers taken there, or in Cumberland. 18 Car. 2. c. 3. 29 Car. 2. c. 2.
- Outlawry. { For an Offence not within the Benefit of Clergy. 1 Ed. 6. c. 12. 4 & 5 P. & M. c. 4. 8 El. 18 El. c. 7. 22 Car. 2. c. 5. 3 & 4 W. c. 9.

Pick-Pocket. } 8 *Eliz. c. 4.* Taking above 12 *d.* from the Person *clam & secrete* (privily and secretly) for otherwise Clergy is to be allowed. *H. P. C. 231.*

Piracy. } The Accessary before and after to suffer as Principal. 11 & 12 *W. c. 7.* 4 *Geo. c. 12.*

Poisoning. — Of Malice prepensed. 1 *Ed. 6. c. 12.*

Popish Recusants. } Those who are appointed to abjure, and refuse, or return again. 35 *Eliz. c. 1 & 2.*

Priests, &c. } Those who receive them, being Natives of England, and ordained by the See of Rome. 27 *El. c. 2.*

Rape. — 18 *Eliz. c. 7.*

Rioters. — 1 *Geo. c. 8.*

Robbery in the Highway. } If found guilty upon Indictment. 23 *H. 8. c. 1.*
 { If mute, or challenge above 20. 25 *H. 8. c. 3.*
 { If attainted. 1 *Ed. 6. c. 12.*

* For so is the Statute.

It must be alledged to be done * *in alta via Regia* (in the King's Highway); for if it is a *Foot-way*, he shall have his Clergy; but if *in via Regia* without *alta* (in the King's Way, without [the Word] high), he shall not have Clergy. *Moor 5. Het. 75. Mod. 5.*

Vide 5 *Affiz. c. 6, & c. 31.*

Robbery in a Dwelling-house, Shops, or Warehouses, Stables, &c. } Taking Goods by Day or by Night, the Owner or other Person being there, and put in Fear; or shall rob any Dwelling-house in the Day-time, any Person being therein; or break a Dwelling-house, Shop or Warehouse thereunto belonging, in the Day-time, and taking Goods to the Value of 5 *s.* tho' no Person be therein; the principal Offenders and the Accessaries, and those who counsel, hire or command any Person to commit Burglary, 3 & 4 *Will. & Mar.* Being indicted and standing mute, or challenge above twenty Jurors.

Ship. } Destroyed by Mariners. 1 *An. c. 9.* 4 *Geo. c. 12.*

Soldier. } Departing without License. 2 *Ed. 6. c. 2.*
 { Wandring without a Testimonial from a Justice. 39 *Eliz. c. 17.*

Person

- Stabbing. } Person not having a Weapon drawn, or not striking first, and Death ensuing within six Months. 21 Jac. c. 6.
- Transported Felons and returning within the Time. 4 Geo. c. 11. 5 Geo. c. 28. 6 Geo. 2. c. 23.
- Woollen-Cloth. } Cloth cut and taken, stole or carried away from Tenters in the Night-time. 22 Car. 2. c. 5.
- Wool. } Unlawful Transporters, &c. 4 Geo. c. 11. and returning after Transportation.
- Woman. } Stolen, having Lands or Goods, or being Heir apparent, he that marries, defiles, or receives her knowingly. 3 H. 7. c. 2.
- Clergy taken from Accessaries by Statute. } 'Tis a Rule in Law: Where a Statute takes away Clergy from the Principal, it is not by that Means taken away from the Accessary, unless particularly named. Accessaries.
- In Burglary. } Accessaries before and after the Fact. 3 & 4 W. & M.
- In Burning Houses or Barns. } Accessaries in all Cases. 4 & 5 P. & M. c. 4. Vide 10 Geo. 2. c. 32. §. 4. Burning Coal Mines, &c.
- Buying and receiving stolen Goods. } Knowing them to be stolen, are Accessaries to the Felony after the Fact. 3 & 4 W. & M. c. 9.
- Murder. } Accessaries before the Fact. 4 & 5 P. & M. And. 195. c. 4.

The Words of this Statute are, *viz.* If a Man *command, counsel* or hire another to commit *wilful Murder*, he shall not have the Benefit of Clergy. One Mr. *Grevil* was indicted, for that *malitiose excitavit, movit & procurabat* (maliciously excited, moved and procured) the Principal to commit Murder. Now though these Words differ from those in the Statute, yet the Indictment is good; for to *move and procure* a Thing to be done, amounts to *Counselling*, and is the same in common Sense and Understanding.

Pick-Pocket. } Accessaries, *viz.* to those who rob any Person. 3 & 4 W. & M.

Rape. - Accessaries.

Robbery in the Highway, or Dwelling-house. } Accessaries in all Cases. 4 & 5 P. & M. cap. 4.

The Words of the Statute. *Pb. & M.* are *viz.* If a Man shall *maliciously* command, &c. another to commit the Robbery; the Indictment was against a Person for *procuring*

Clergy. Clerk of the Peace.

Robbery in
the High-
way, or
Dwelling-
house.

curing and counselling the Principal to do it, leaving out the Word *Malitiose*. Now though that Word might be properly applicable to other Offences mentioned in that Act, as Treason, Murder, &c. yet in Robberies it may not be so, because in that Crime there is seldom any Malice, but rather a covetous Desire of getting; but it being a material Word, and particularly mentioned in the Statute, the Indictment is not good without it.

Accessaries to robbing Dwelling-house, Shop or Ware-house, and taking in Money or Goods to the Value of 5 s. 3 & 4 W. & M.

Woman.

Convicted of an Offence for which a Man may have Clergy, shall upon her Prayer suffer the same Punishment the Man should, and may be kept in Prison, not exceeding a Year; but upon her second Conviction shall suffer Death. 4 & 5 W. & M.

Clerk of the Crown, of the Peace, or of the Assizes, certifying by Transcript the Indictment, or the Tenor thereof to the Judges or Justices in any other County, that the Person had the Benefit of the Clergy, that shall be a sufficient Proof thereof.

But note, a Criminal (though allowed his Clergy) if not burnt in the Hand, seems in the same Case as one at Common Law was after Conviction and before Purgation, *viz.* his Credit is lost, and incapable of being a Witness; for the Law is not satisfied till he is either burnt or pardoned: 'Tis true, he may be bailed in order to get a Pardon, but till then the Conviction is still upon him. But after Burning, the Judge may still detain him, if he thinks fit, till he find Sureties for his Good Behaviour, or he may discharge him.

Clerk of the Peace.

His Beginning,
and by whom
ointed.

HE is an Officer at the Common Law, for he is Clerk to the Conservators or Justices of the Peace; and 'tis very probable he was first instituted by them to make Entries, and to record their Proceedings.

In former Times, the *Custos Rotulorum* (Keeper of the Rolls) had the Keeping of those Records; but afterwards when

when that became an Officer of Honour and Dignity, then he appointed a Clerk of the Peace.

Thus it stood till 37 Hen. 8. and then a Law was made, 37 H. 8. c. 1. reciting, That the Chancellor had taken upon him an Authority to make a *Custos* for Life, and he to appoint a Clerk of the Peace for Life, which was a Grievance; and therefore from thenceforth the *Custos* was to be appointed by the King during Pleasure, and the Clerk of the Peace was to continue in his Office, no longer than the *Custos*.

Afterwards by 4 Ed. 6. this Statute, as to the Appointing of a *Custos*, was repealed, and the Chancellor had Power again to appoint a *Custos*; but the Office of the Clerk of the Peace remained as before.

And thus it continued till 1 W. & M. and then the Appointment of a *Custos* was enacted to be by the Statute of 1 W. & M. c. 21. f. 4, 5. 37 H. 8. and he is to appoint a Clerk of the Peace to enjoy the Office, so long only as he shall behave himself well.

This was introductive of a new Law; for before he was removeable with the *Custos*; but now he hath an Estate for Life, determinable upon his Misbehaviour.

So that by this Act, the Power of the *Custos* is abridg'd; for before he might appoint any Person at large; but now the Person appointed must be Resident in the County. Formerly the *Custos* might remove the Clerk, &c. and the Sessions could not, for they had only Power to suspend him for any Misbehaviour; but now the Justices may remove him upon a Complaint exhibited in Writing, and due Proof thereof, and the *Custos* cannot; and if he appoint not another before the next Sessions, the Justices may do it. Sect. 6. 1 Show. 156. 4 Mod. 167.

But the Justices can discharge no Clerk of the Peace for Fault appearing in Court, without Articles in Writing. Sect. 6. 1 Show. 282. 4 Mod. 167 to 172. *Harcourt's Case*.

If the *Custos Rotulorum* appoints him in any other Manner than the Act directs, he is no Clerk of the Peace. 4 Mod. 233. *Owen's Case*.

A *Custos Rotulorum* being displaced, and a new one put in his Room, to whom the Clerk of the Peace refused to deliver the Rolls, for which he was indicted and found guilty, and removed from his Office, and brought a *Mandamus* to be restored; and this Matter being returned it was said, That though he hath a more fixed Estate in his Office than the *Custos* hath, yet he is still but his Deputy, and may be removed by a Charge exhibited in Writing against him to the Justices; and therefore the Court would not restore him; per three Justices *contra Holt*. 4 Mod. 31. *Evans's Case*.

He is to be present at the Sessions, and to draw up the His Duty. Process of the Court; he is to read Indictments, and to read the Proceedings of the Justices.

Clerk of the Peace.

He must record the Rates of Servants Wages, and enrol the Discharge of Apprentices. 5 *Eliz. c. 4.*

He is to certify into *B. R.* the Transcripts of Indictments, Outlawries and Convictions before the Justices within forty Days next after the Conviction, &c. or within twenty Days after the Beginning of the Term next ensuing, or forfeits 40 *s.* to the King and Prosecutor. 34 & 35 *H. 8. c. 14.*

He must record the Presentments for not coming to Church, and the Certificates for not taking the Oath of Allegiance. 3 *Jac. c. 4.*

He is to file the Hall-keeper of *Blackwell-hall's* Certificate of the Length and Breadth of Cloths, for which he is to have 1 *s.* and to give an attested Copy of such Certificate to any Person that demands it, for which he is also to have 1 *s.* and no more. 1 *Geo. 1. c. 15.*

His Fees by the Statute.

Inrolling } A Bargain and Sale of Lands not exceeding
40 *s. per Ann. 1 s.* And if it doth exceed
that Value, then 2 *s. 6 d.* 27 *H. 8. c. 16.*

License and } For a } Badger,
Recogni- } Drover, } 2 *s.* If he take more, he
zance. } Lader, } is finable.
Kidder, }

In an Indictment for Murder, the Fact was laid to be committed 31 *Junii*, and the *Deputy*, in the Presence and Hearing of the *Clerk of the Assize*, did read the Indictment as it was: The Offender was tried, and then the *Clerk of Assize* informed the Court of the Mistake in the Indictment, *viz.* That there were not thirty-one Days in *June*; but because he did not inform them before the Trial, he was fined 40 *l.* and committed. *Moor 555. Lewes's Case.*

10 & 11 Will.

He must take nothing of any Witness who shall give Evidence against a Felon, nor take more than Two Shillings for drawing any Bill of Indictment against a Felon; the Forfeiture is 5 *l.* with full Costs.

And if he draws a defective Bill, he shall draw a new one without any Fee, under the Penalty of the like Forfeiture, to be recovered by him who shall sue for the same in any Court of Record.

Clipping,

Clipping, Counterfeiting and Coining of Money.

Clipping was not Counterfeiting within the Meaning of the Statute of 25 Ed. 3. c. 2. but it was declared to be High Treason by a subsequent Statute, viz. 3 H. 5. c. 6. and so the Law stood till 1 Mar. and then that Act was repealed; but afterwards, by 5 Eliz. c. 11. Clipping, Washing, Rounding or Filing the proper Money of this Realm (for Lucre's Sake) or of Foreign Money made current here, was made High Treason. 2 Jones 233.

Afterwards by the 18 Eliz. c. 1. Impairing, Falsifying, or making light our Coin, or Foreign Money made current here, (for Lucre's Sake) was made Treason: These are Crimes of the same Nature with Clipping, but they differ in the Punishment; for these latter Offences work no Corruption of Blood.

But now a new Law is made to prevent the Clipping, Diminishing or Impairing the Coin of this Realm.

6 & 7 W. 3. c.
17.
Sect. 4.

That the Buyer or Seller of Clippings or Filings, or any Person who shall knowingly have them in his Possession, shall not only forfeit the same, but likewise 100 l. one Moiety to the King, and the other to the Informer, and shall also be burnt in the Right Cheek with the Letter R. and be committed till he pay the Fine.

And in Order to discover such Persons, it is by the same Statute enacted, That two Justices in any County, and one or more * Wardens of the Company of Goldsmiths, with two or more of their Assistants, if within the weekly Bills, &c. may enter the House of any suspected Person; and if resisted, may with the Assistance of a Constable break it open, and seize the Bullion and the Person, and examine him or her upon Oath, viz. Whether it was lawful Silver, and whether the same was not the current Coin of this Realm, or the Clippings thereof before it was melted; and if it is not proved by Oath, as aforesaid, or by the Oath of a credible Witness, that it is lawful Silver, and that the same was not Clippings before it was melted, then the two Justices may commit the Person, and secure the Bullion, and compel the Witnesses to enter into a Recognizance to prosecute; and if the Person upon his Trial on an Indictment for melting the current Coin, &c. shall not prove by the Oath of one Witness, that it was lawful Silver, and that it was not the current Coin, &c. nor Clippings thereof before it was melted, he must be found guilty, and be committed without Bail for six Months.

* They are to carry the Person before the next Justice, who is to examine him upon Oath, &c.

He

Sect. 9.

He that apprehends and prosecutes such Offender to Conviction, shall receive of the Sheriff 40 *l.* within a Month after Conviction, producing the Judge's Certificate.

Casting Ingots of Silver, or stamping any Marks to imitate *Spanish Bars*, Penalty 500 *l.* and Forfeiture of the Silver so cast.

8 & 9 W. 3.
c. 26. f. 1.

By another Statute made 8 & 9 *Will.* they who make Puncheons or Dies knowingly, or mending, beginning or proceeding to make them, or assisting therein, or any Edging-Tool, or Coining-Press, or cutting Engine, or having in their Possession any such Puncheon without any lawful Authority, shall be guilty of High Treason.

Sect. 2.

So likewise any Person conveying out of the Mint any Puncheon, Die, &c. and Persons knowingly concealing the same, shall be guilty of High Treason.

Sect. 3.

The like Penalty on Persons making the Edges of any counterfeit Coin, and likewise on those who colour or guild any Coin in Resemblance of the current Coin, or round Blanks of base Metal, or gilding Silver Blanks fit to be coined.

Sect. 5.

And if any Puncheon or Die is found in the Possession of any Person not employed in the Mint, it may be seized, and produced in Evidence against such Person, and then it shall be broke into Pieces; and so shall any counterfeit Money produced in Evidence: And this must be done in open Court, or in the Presence of some Justice of the Peace, and then delivered to whom of Right it doth belong.

Sect. 6.

Persons blanching Copper for Sale, or mixing blanched Copper with Silver, or buying, or selling, or offering to Sale, any malleable Mixture of Metals, which shall be heavier than Silver, and look, and touch, and wear like Gold; or he who shall take, pay, or put off counterfeited milled Money, or any milled Money unlawfully diminished, and not cut in Pieces, for less than its Denomination doth import, every such Person shall be guilty of Felony.

This Act was at first but Temporary; but being found by Experience to be very useful, therefore it was by the Statute of 7 *Anne*, c. 25. made perpetual.

And whereas the Prosecution upon that Act was to be within three Months after the Offence, that Time was enlarged by this subsequent Statute, as to any Prosecution for Making or Mending, or beginning or proceeding to make or mend any Coining Tool or Instrument therein prohibited, or by marking Money round the Edges with Letters; for in all these Cases, the Prosecution may be at any Time within six Months after the Offence committed.

9 & 10 W. 3.
c. 21. f. 1.

By an Act 9 & 10 *Will.* it was made lawful for any Person to cut or break in Pieces any Silver Money tender'd in Payment which shall be diminished, or which by the Impression, Colour or Weight, shall be suspected to be counterfeited, and

the

the Person tendering the same, shall be at the Loss; but if it is full Weight and good Money, then the Person breaking it shall receive it at the Rate for which it was coined.

Any Dispute arising, Whether the Piece cut is counterfeit-
ed, if in a City or Town Corporate, shall be determined by
the Chief Magistrate; if in the County, then by the next
Justice of Peace, who may administer an Oath, if they shall
see it convenient.

The Tellers and Clerks of the Exchequer, and the general
Receivers of every Branch of the Revenue and Taxes, must
cut every counterfeit Piece that shall be tender'd in Payment;
and the better to discover the same, shall weigh in whole
Sums or otherwise, all Silver Money by them received.

This was Treason by the Common Law; and it is held, Counterfeit-
That Washing, Filing, Diminishing or Selling, &c. for Lucre-
fake, is Counterfeiting within the Meaning of the Statute of
5 Eliz. and the Counsellors, Consenters and Aiders within
the Statute of 18 Eliz.

Forging our Coin without uttering it is Treason; and
forging foreign Coin made current, is Misprision of Treason.

Importing, or bringing counterfeit foreign Coin knowingly,
is Treason, by the Statute of 25 Ed. 3. But then it must be
brought from a foreign Nation, not under the Dominions of
England, and it must be in Likeness of our Money, and the
Importer must know it to be counterfeit, and must make Pay-
ment thereof.

One Witness is sufficient to convict the Offender.

Uttering false Money, knowing it to be so, is not High
Treason, but a great Misdemeanor, and finable.

But if he that utters it doth know who coined it, or if he
supplied the Coiner with Coining Tools, or with Silver, and
Money is coined accordingly; in either of these Cases, he
who utters it, is guilty of High Treason, because he is aiding
and assisting to the Coining. *Kelynge* 33.

And here it may not be improper to mention the Value of
Foreign Coins which pass in our Plantations abroad, the Cur-
rency whereof was settled by the Queen's Proclamation in
June 1704; and the true Value of them, according to their
Weight and Assays, are as follows:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Sevil</i> Pieces of Eight old Plate ————	0	4	6
<i>Sevil</i> Pieces of Eight new Plate, ————	0	3	7
<i>Mexico</i> Pieces of Eight 17 Penny-Weight, ————	0	4	6
<i>Pillar</i> Pieces of Eight 17 Penny-Weight, ————	0	4	6
<i>Peru</i> Pieces of Eight old Plate, 17 Penny-Weight, ————	0	4	5
Cross Dollars 18 Penny-Weight, ————	0	4	4
Ducatoons of <i>Flanders</i> 20 Penny-Weight, ————	0	5	6
<i>French</i> Crowns 17 Penny-Weight, ————	0	4	6
Cruzado's			

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Crusado's of Portugal 11 Penny-Weight, ———	0	2	10
Three Gilder Pieces of Holland, ———	0	5	2
Old Rixdollars 18 Penny-Weight, ———	0	4	6

The Halfs, Quarters, and others in Proportion, but none of *Sevil*, *Mexico*, or Pillar Pieces of Eight, though of 17 Penny-Weight and an Half, shall pass for more than six Shillings a Piece; and the *Peru* Pieces of Eight, and Dollars, and other Foreign Coins, shall be regulated according to their Weight and Fineness, in Proportion to the Pieces of Eight of *Sevil*.

A Warrant to commit a suspected Person, who could not prove that the Bullion was lawful Silver.

To the Constable of, &c. and to the Keeper of the Common Gaol for the said County at H.

6 & 7 Will.
Two Justices;
Imprisonment
for six Months.

Suffex, to wit, **W** Hereas a certain Quantity of Bullion hath been lately found and seized in the Possession of T. P. of, &c. which said Bullion, before the Melting thereof, is suspected to be unlawful Silver: And whereas upon the Examination of the said T. P. taken before us this present Day upon Oath, he hath not made sufficient Proof, that the said Bullion, before the Melting thereof, was not current Coin, or Clippings of such Coin, according to the Form of the Statute in that Case made and provided: These are therefore to command you to convey the said T. P. to the common Gaol at H. aforesaid, and to deliver him there to the Keeper thereof, together with this Precept: Commanding also you the aforesaid Keeper to receive the said T. P. into your Custody and Gaol aforesaid, and him there safely to keep until he shall be from thence delivered by due Course of Law: And hereof fail not. Given, &c.

An Indictment for Coining and Uttering of Money.

The Judgment Suffex, to wit, **T** HE Jurors, &c. That T. P. of, &c. not for this Offence, and for Clipping, is to be drawn, &c. and hang'd, but not quarter'd; tho' my Lord Coke says, That the Judgment for Clipping is the same as in High Treason. 3 Inst. 17. Levinz 2. p. 98. 1 Vent. 254.

by the Instigation of the Devil on the twenty-sixth Day of October in the 5th Year of the Reign, &c. at the Parish of, &c. in the said County, did falsely and traiterously forge, counterfeit and coin twenty Pieces of Brass and Copper, and other mix'd Metals, to the Resemblance and Likeness of good, lawful and current Money of the King of this Kingdom of England, called Shillings, and knowing the said twenty Pieces, so as is before related, to be falsely and traiterously forged, counterfeited and coined, the said T. P. afterwards, to wit, on the said twenty-sixth Day of October in the fifth Year abovesaid, at, &c. in the said County, and elsewhere did deceitfully, falsely and traiterously expose, pay, and utter five Pieces thereof to divers Subjects of our said Sovereign Lord the King, for the true, lawful and current Money of England, to the great Prejudice and Deceit of the Subjects of our said Sovereign Lord the King, and against the Peace of our said Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

An Indictment for Counterfeiting, and against another for Relieving after the Offence.

Suffex, to **T**HE Jurors, &c. That T. P. of, &c. not wit, having God before his Eyes, but being seduced by the Instigation of the Devil, on the twenty-sixth Day of October in the fifth Year of the Reign, &c. at Lewes in the County aforesaid, did falsely and traiterously forge, counterfeit and coin forty Pieces of Pewter and other mix'd Metals, to the Resemblance and Likeness of good and lawful Money of England called Shillings, and afterwards, that is to say, on the said twenty-sixth Day of October in the fifth Year abovesaid, at Lewes aforesaid in the said County, did deceitfully, falsely and traiterously expose and utter the said Pieces, so as is before related to be falsely and traiterously forged, counterfeited and coined, to divers Subjects of our said Sovereign Lord the King, for the true and lawful Money of the Kingdom of England, to the great Prejudice and Deceit of the Subjects of our said Sovereign Lord the King, and against the Peace of our said Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

And that J. O. of, &c. knowing that the said T. P. had done and committed the Treason aforesaid, in Manner and Form aforesaid, afterwards, to wit, on the second Day of January in the Year above-mentioned, at Lewes aforesaid in the said County, received and comforted the said T. P. and concealed the Treason aforesaid, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Cloth and Clothiers.

UNDER this Title, Three Things may be consider'd:

1. Such Things which relate to Justices.
2. Which relate to Overseers of Cloth.
3. Offences against the Statutes concerning Cloth, and the Penalties.

First, one Justice in the County, and the chief Officer in a Corporation *per* 3 & 4 *Ed. 6. c. 2. §. 9.* and afterwards by 39 *Eliz. c. 20. §. 4.* two Justices in the County, and the chief Officer in Corporations, may appoint and swear Overseers or Searchers for faulty Cloth. Forfeitures to be divided between the King and Overseers.

* Overseers may do the like. 21 *Jac. c. 18.*

Justices * may search after and seize Ropes, Winches and Engines, used for stretching Northern Cloths, and he who opposes, forfeits 10 *l.* 39 *Eliz. c. 20. §. 8.*

Two Justices may call before them any suspected Persons; and if by Confession of the Party, or Oath of two Witnesses, it appears he is guilty, they must certify it under their Hands and Seals to the Officers of the Parish where the Offence was committed. 21 *Jac. c. 18.*

Justices neglecting to appoint Overseers, as enjoined by 39 *Eliz.* or not searching for Ropes, Winches, &c. forfeit 5 *l.*

7 *Jac. 1. c. 7. §. 2.*

Two Justices in a County, and chief Officer in a Corporation, with another joined with him, may inflict Whipping upon a Sorter, Carder, Kember, Spinster or Weaver of Wool, found guilty by Confession, or Oath of one Witness, of imbezilling or detaining Wool from the true Owner; and the Receiver is to incur the like Punishment.

Duty of Overseers and other Officers.

Overseer, when chosen, if he refuse to execute his Office, loseth 40 *s.* to the King, and to the Justices by whom appointed, and to be committed till paid, 3 & 4 *Ed. 6. c. 2.* and by 39 *Eliz. c. 20.* forfeits 5 *l. ut prius.*

Must search once in every Quarter of a Year, or forfeit 10 *l.* between King and Prosecutor. *Ibid.*

If interrupted in his Office, the Offender loseth 20 *s.* between King and Overseer. *Ibid.*

No Advantage of Forfeits, unless Prosecution be within a Year after it accrues. *Ibid.*

Overseers must search once a Month for Defects in the Northern Cloths. 39 *Eliz. c. 20. §. 4.*

May present at next Sessions any Cloth stretched, or sealed with false Seals. *Ibid.*

Over-

Overseer must fix a Leaden Seal to each Cloth, containing the Length and Breadth thereof, with the Word [*Searched*] thereon; and this is an Exemption from any further Search. Sect. 6.

If any besides Overseers set or take away any Seal without Warrant, the first Offence is 10 *l.* convicted a second Time by two Witnesses or by Verdict, forfeit 20 *l.* to be divided between the Queen, Informer and Poor, and the Offender to stand in the Pillory. *Ibid.* Sect. 7.

Searchers may enter into any House or other Place to find deceitful Cloth. 21 *Jac. c. 18. §. 4.*

Officer being sued, may plead the General Issue, and shall recover double Costs. *Ibid. §. 5.*

Searchers in a Parish, where defective Cloth is made, shall certify it by the Word (*Faulty*) stamped on the Seal. *Ibid. §. 7.*

He who searches Cloth already searched, forfeits 5 *l.* to the Party grieved. *Ibid. §. 7.*

Searcher must set his Name upon the Seal of the Cloth. *Ibid.* Sect. 11. Christian and Surname.

Justices having certified under their Hands and Seals, that any Person hath used Flocks, Thrum, Hair, or other deceitful Stuff, in making broad Cloth, the Church-wardens and Overseers of the Poor of the Parish where the Offence is committed, may levy 5 *l.* upon the Goods of the Offender, by Distress and Sale, &c. and distribute it to the Poor of that Parish.

By 2 & 3 *Ph. & Mar. c. 11.* Cloth-worker not living in a City, Borough, or Town Corporate, must not keep more than one Loom; Forfeiture is 40 *s.* per Month. Indictment will not lie at Sessions on this Act. 4 Mod. 379. King and

Baggs, because 'tis a penal Act, of which the Justices at Sessions can't hold Cognizance without express Power given them by the Act, which is not in this Case.

† Whether Clothier hath set a Leaden Seal to his Cloth, declaring the just Length; if not, he may be fined. 3 & 4 Ed. 6. cap. 2. † Offences against the several Acts and the Penalties.

If Cloth is stretched above a Yard and Half in Length, and a Quarter in Breadth, the Offender forfeits 40 *s.*

Straits and Kerseys stretched above a Yard in Length, and Half a Quarter in Breadth, Forfeiture is 20 *s.*

Browns, Blues, Tawnies and Violets, must be well boiled, grieved and maddered upon the Woad, and well shot with Cork and Orchel before dyed: Penalty 20 *s.*

Wool for Russlets, Marbles, Grayes, Bayes, or Wool for Hats or Caps, must be woaded, maddered and boiled before dyed: Penalty 40 *s.*

Dying with Brazile to make a false Colour: Penalty 20 *s.*

Flocks, Chalk, Flower, Starch, or any deceitful Thing put in Cloth, except *Devonshire* or *Cornwall* Straits: Forfeiture is 40 *s.*

Iron Cards, or Picards, used in rolling Wool, are forfeited, and 20 *s.* besides; all the Forfeitures to be divided between

tween the King and the Overseer, and to be recovered in any Court of Record: Sold by any other Measure than Yard and Inch; Penalty for every Yard 6*s.* 8*d.*

Denying or with-holding faulty Cloth, forfeits 10*l.* for first Offence, 20*l.* for second, to be divided between King, Informer and Poor; and being convicted of the third Offence, must stand in the Pillory, 39 *Eliz. cap. 20.*

Justices may determine the Offences of denying or with-holding, &c. in their Sessions, and Justices of Assize may convict the negligent Justice upon Proof by two Witnesses, and in Default thereof, the Penalties of 10*l.* and 20*l.* may be recovered in any other Court; and then the one Moiety goes to the King; and the other to the Informer. *Ibid.*

• 4 *Jac. 1. c. 2.*
must be be-
tween 30 and
34 Yards wet,
and 6 Quarters
and half with-
in the Lifts,
and weigh 86
Pounds.

Kentish Cloth * above the Price of 6*l.* must be between twenty-eight and thirty Yards in Length, being wet, and seven Quarters broad within the Lifts, and must weigh seventy-six Pounds after it is dressed: The Forfeiture is 20*s.* for Want of Length or Breadth.

By 4 *Jac. c. 2.* the Forfeiture, if it exceeds in Length, for every Yard and Inch so exceeding, is 10*s.*

If it wants Weight, the Forfeiture for every two Pounds wanting is 10*s.*

If it want Breadth, the Seller for one whole Piece forfeits 20*s.* for Half a Piece 10*s.* and so proportionably; to be divided between the King and Overseers, &c.

10 *A. c. 16.*
Mixed or Med-
ley Broad
Cloth.

† 1 *G. 1. c. 17.*
refusing to
take the Oath
forfeits 20*l.*

By 10 *A. c. 16.* all mixed or medley Broad Cloth shall be measured at the Fulling Mill, after it is milled by the Master of the Mill, who shall first take an † Oath before some near Justice, that he will truly perform such Measuring; (the Justice to give him a Certificate of his having so done) and shall fix at the Head end of such Cloth, before carried away, a Seal of Lead, and rivet the same, and stamp his Name thereon, mentioning in Figures the Length and Breadth; for which the Owner shall pay him a Penny. And the Number so stamped shall be the Rule of Payment to the Buyer, except by Accident any Part be damaged and taken off, and then the Part not damaged shall be again measured, sealed, &c.

If the Master of the Mill refuse or neglect to fix such Seal, or any Person afterwards take it off, or deface or alter the Figures before the Cloth is sold; and if the Buyer refuse to accept the same according to such Measure the Offender convicted on Oath, forfeits † 20*s.* for each Cloth.

‡ 1 *G. 1. c. 17.*
forfeits 20*l.* in
lieu of 20*s.*

No Clothier, Fuller, &c. after such Cloth is fully wet, sealed and stamped, shall stretch any Cloth above one Yard in twenty Yards Length, or above one Nail in a Yard in Breadth, on Forfeiture of 20*s.*

And every Mill-man shall keep in his Mill a Table or Board twelve Foot long and three Foot wide whereon the
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Cloth shall be creased and laid plain, with the Length of a Yard marked thereon, with one Inch more, viz. thirty-seven Inches long, and in Default thereof he forfeits 10*s*.

Every Clothier, Cloth-worker, &c. shall make Payment in Money to all employed in the Woollen Manufacture for all Work done, and shall not impose on them any Goods or Wares instead of Money, on Forfeiture of 10*s*.

See 12 Geo. 1. c. 34. f. 4. and by 13 Geo. c. 23. f. 5. Prosecution to be within three

Months after the Offence.

All Offences against this Act to be heard and determined by one or more Justices of the Places where committed, (provided the Justice be not concerned in the Matter of the Complaint) on Oath of one Witness; and all Penalties are one Half to the Informer, and the other to the Poor of the Parish. And the Offender refusing Payment for fourteen Days after Conviction, the Justice may grant his Warrant to levy it by Distress, returning the Overplus (if any); and if no Distress, commit to Gaol or House of Correction, not exceeding three Months for one Offence; and all Offences to be prosecuted within thirty Days after they are committed or discovered.

1 Geo. 1. c. 11. the same. Vid. 13 Geo. 1. c. 23. f. 5.

But an Appeal lies to the next General Quarter-Sessions on giving Notice thereof. And if the Justices there confirm or disannul the former Order, they shall allow such Costs to the Party grieved, as they shall think reasonable; to be levied, &c. as is usual in Cases of Appeal. Vid. 10 Ann. c. 16. §. 9. and vide 7 Geo. 2. c. 25. and vide 12 Geo. 2. c. 1. and see the Statutes at large, which are very copious upon this Head, not to be reduced within the Compass of this Work.

1 Geo. 1. c. 17. 40 Days.

A Warrant to punish an Imbeziler and Detainer of Wool, by Whipping. 7 Jac.

1. cap. 1.

Somerſet, **W** Hereas A. B. Apprentice to D. E. of — to wit, Clothier, hath this Day made Oath before us, etc. That E. F. of — Weaver, hath unlawfully imbeziled and detained, or wasted the Yarn of the said D. E. his Master, by him the said A. B. delivered to the said E. F. by Order of the said D. E. the said A. B. having delivered, and the said E. F. received Yarn sufficient to make ten Yards of Cloth, according to the usual Quantities of Yarn employed in making the said Cloth; the said E. F. instead of making the said ten Yards hath made only seven Yards of Cloth, and refuses to deliver and to account for the Remainder of the said Yarn, contrary to an

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AR

Coaches and Chairs.

Act of Parliament made in that Behalf: And whereas the said E. F. having been examined before us, hath not cleared himself from the said Charge: These are therefore in his Majesty's Name to command you to put the said E. F. in the common Stocks of your Parish, for the Space of, &c. and that then you do bind him to the common Whipping Post, and whip his naked Back, till it shall be bloody, according to the Direction of the Acts of Parliament for punishing such Offenders. Given, &c.

See also Tit. Dyers.

Coaches and Chairs.

FIVE Commissioners appointed to license Hackney-Coaches and Chairs.

6 Ann. c. 23.
Hackney-
Coaches.

That in London or Westminster, or within ten Miles, no Hackney-Coachman shall take for his Hire above 10 s. per Day, twelve Hours to the Day; and by the Hour not above 18 d. for the first, and 12 d. for every Hour after; and none shall pay from any of the Inns of Court or thereabouts, to any Part of St. James's or Westminster (except beyond Tuttle-Street) above 12 d. and the same Price from those Places to the Inns of Court or thereabouts; and from any of the said Inns or thereabouts, to the Royal Exchange, 12 d. and to the Tower, or Bishopsgate-Street, or Aldgate, or thereabouts, 18 d. and so from the said Places to the said Inns: And the like Rates from and to any Places at the like Distances.

And none are obliged to pay above 12 d. for the Use of any Hackney-Coach for any Distance (not specified in the Act) so as it exceed not one Mile and four Furlongs, nor above 18 d. for any Distance (not specified) above one Mile and four Furlongs, and not exceeding two Miles.

In Pursuance of which Act, the Commissioners for licensing and regulating Hackney-Coaches and Chairs, caused to be measured the several Distances between the most noted Places within the Limits of the Weekly Bills (not specify'd in the Act) and rated the same, viz.

1 s. Rates for Coaches.

From Westminster-Hall to Marlborough-street, Bolton-Street, Soho-Square, Bloomsbury-Square, Little Queen's Street, Holbourn.

From St. James's Gate to Queen Anne's Square, Westminster, the nearest Corner of Red-Lion Square.

From Golden Square to Red-Lion Square.

From the Hay-Market Play-house to Red-Lion Square, Bloomsbury Square, David's Inn, Queen Anne's Square, Westminster.

Coaches and Chairs.

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1 s. Rates for Coaches.

- From *Red-Lion Square* to *Guildhall*.
- From the Upper End of *Fetter-Lane*, *Holborn*, to *Aldgate*.
- From the *Royal Exchange* to *Hoxton Square*.
- From *Newgate* to the Middle of *Greek-Street*, near *So-bo Square*.
- From the *King's Head Tavern*, *Southwark*, to the Sign of *Sir William Wakworth*.
- From *Grey's Inn Gate* to *Sadler's Wells* by *Islington*.
- From *Tom's Coffee-house* in *Russel-Street*, *Covent-Garden*, to *Newcastle-house* near *Clerkenwell Church*.
- From *Temple-Bar* to *Billinggate*.
- From *Aldgate* to *Shadwell Church*.

1 s. 6 d. Rates for Coaches.

- From *Drury-Lane Play-house* to *Queen Anne's Square*, *Westminster*.
- From *Westminster-Hall* to *St. Paul's Church* or *Queen's Square*, *Red-Lion Fields*.
- From *St. James's Gate* to *Hatton-Garden*.
- From the *New Exchange*, *Strand*, to the *Royal Exchange*.
- From the *Hay-Market Play-house* to *Hatton-Garden*.
- From *Red-Lion Square* to *Westminster-Hall*.
- From *St. James's* to *Marybone Church*.
- From the *Royal Exchange* to *Bloomsbury Square*, or to the *Watch-house* at *Mile-End*.
- From the Outside of *Aldgate* to *Stepney Church*.
- From *Bedford-Street*, *Covent-Garden*, to *Coleman-Street*.
- From *Bread-Street* to *Upper Moorfields*, and thence to *Hoxton Square*.
- From *Austin Fryars Gate* in *Broad Street* to *Hart-Street* by *Bloomsbury Market*.
- From *St. Martin's Lane* in the *Strand* to *Gold-Street* by *Wood-street*.
- From the End of *Lombard-Street* next *Gracechurch Street* to *Somerset-house*.
- From *St. Lawrence Church* by *Guildhall* to *Brownlow-Street* in *Drury-Lane*.
- From the *Royal Exchange* to the Church at *Newington* beyond *Southwark*.
- From *Tom's Coffee-house* by *Covent-Garden* to the *Royal Exchange*.
- From *Stocks-Market* to *Charing-Cross*.
- From *Aldgate* to *Ratcliff-Cross*.

And by the said Act, the Fare for a Hackney-Chair is Hackney-
 1 s. for any Distance not exceeding a Mile, and 1 s. 6 d. for Chairs.
 any Distance not exceeding a Mile and four Furlongs, which
 by the said Commissioners are thus appointed, viz.

Coaches and Chairs.

1 s. Rates for Chairs.

- From *Westminster-Hall* to *Covent-Garden*, or to *Exeter-Change*.
- From *St. James's Gate* through the *Park* to *Westminster-Hall*.
- From *St. James's Gate* to *Somerset-House*.
- From *Somerset-House* to the Upper End of *Hatton-Garden*.
- From the Play-house at the *Hay-Market* to *Bolton-Street*, *Effex-Street*, *Soho Square*, the Entrance of *Lincoln's Inn Fields*.
- From the nearest Corner of *Golden-Square* to *Drury-Lane Play-house*.

1 s. 6 d. Rates for Chairs.

- From *Westminster-Hall* to *Marlborough-Street*, *Soho Square*, *Bolton-Street*, *Temple Bar*.
- From *St. James's Gate* to *Queen Anne's Square*, *Westminster*.
- From *Golden-Square* to *Red-Lion Square*.
- From *Red-Lion Square* to the *Hay-Market Play-house*.
- From *Queen's Square* to the said *Play-house*.
- From the *Hay-Market Play-house* to *Bloomsbury-Square*, or *Grey's Inn*.

10 Ann. c. 19.
f. 158. gives Liberty to license
100 more
Chairs, & by 12
Geo. 1. c. 12.
f. 15. another
hundred.

1 Geo. 1. c. 57.

And by the said Act, the Number of the said Coaches are limited to 800, and Chairs to 200. And if the Commissioners license above the Number, they forfeit 100*l.* Each Coach to pay 5*s.* per Week Monthly, and each Chair 10*s.* per Annum. And a Coach, &c. without a License is 5*l.* and a Chair 40*s.* Forfeiture; and Coach-Horses to be fourteen Hands high, &c.

And the Commissioners may make Rules, Orders, and By-Laws, to be allowed by the Lord Chancellor, &c. and one Justice may punish, inflict, and put in Execution any the Forfeitures, Penalties, &c. and determine Disputes between Coachmen and others; an Appeal lies to the Quarter Sessions. 2

Persons refusing or neglecting to pay Coachman or Chairman what is justly due to him, or wilfully cutting, defacing, or breaking any Coach or Chair; upon Complaint a Justice of Peace is to grant his Warrant for the Offender to come before him; and on Conviction on Oath, award Satisfaction; and on Refusal to pay, &c. bind over to the next General Quarter-Sessions.

A Person driving a Coach, or carrying a Chair for Hire, not being interested himself in a License, but acting under another, being guilty of any Misbehaviour in his Employment, by demanding more than his Fare, or giving abusive Language, or any other rude Behaviour; one Justice of London *Westminster*, *Middlesex*, or *Surrey*, to order him to pay, not exceeding

exceeding 20s. to the Poor. And if not able, or refuse, commit him to the House of Correction for seven Days, and to receive the publick Correction of the House before discharged.

If any Hackney-Coachman, or Driver, shall refuse to go at, or exact more for his Hire than by the said Act 9 Ann. is limited, he forfeits a Sum at the Discretion of the Commissioners, not exceeding * 3 l. nor under 10s. and to be determined by three or more of them in a summary Way, by the Oath of one Witness; one Moiety to the Crown, the other to the Informer.

1 Geo. 1. c. 57.

* By 9 Ann. it was 40s.

None but licensed Persons shall stand, ply, or drive for Hire within the weekly Bills of Mortality, with any Coach, Hearse or Coach-Horses, or shall let to Hire any Mourning-Coach or Coach Horses to attend on Funerals, on the Forfeiture of 5 l. a Moiety to the Informer, and the other to the Crown.

And whereas Undertakers of Funerals have hired Gentlemen Coaches of their Servants, without the Consent of their Masters, to attend on Funerals; 'tis therefore enacted, That none but licensed Mourning Coaches (except the Coaches of Gentlemen attending the Owner, or one of his Family,) shall be driven to Funerals; and if any other are driven, &c. then upon Information to the Commissioners, they may summon the Driver; and he not appearing, or if he appear, and doth not prove the previous Order from the Owner, shall forfeit 5 l. to be recovered of the Driver or Undertaker.

Justices, &c. in their Jurisdictions, may inflict the like Penalties, and levy them as the Commissioners may.

Any Person riding in Cart, or Dray, not having another on Foot to guide it; and being convicted before one Justice, by the Oath of one Witness, forfeits 10s. to the Informer and the Poor of the Parish.

Carts and Drays.

A Warrant to levy the Penalty of a Coachman, &c. for demanding more than his Hire, and for Misbehaviour.

London, to **W** Hereas A. B. of, &c. hath made Information on Oath before me T. B. Esq; one of his Majesty's Justices of the Peace within the Liberties of London and Westminster, That on the — Day of this Instant, &c. he was drawn in a Hackney-Coach by C. D. of — from the Middle-Temple to the Royal Exchange, and being set down, he the said C. D. demanded of the said A. B. 2s. which is 12d. more than his just Fare, and gave the said A. B. very abusive and threatening Language, so that the said

9 Annæ.

Coaches and Chairs. Coals.

A. B. was obliged for his Safety to pay the said C. D. 1 s. 6 d. contrary to the Statute in that Case made and provided; These are therefore to require you to demand of the said C. D. the Sum of 10 s. for the Use of the Poor of, &c. which Sum I do hereby adjudge he hath forfeited for the Offence aforesaid, by Virtue of the said Acts of Parliament, and the Power given to Justices of the Peace thereby; and if the said C. D. shall refuse to pay the same, that then you do convey him to the House of Correction, there to remain for seven Days; and during that Time be kept at hard Labour, and receive the Correction of the House. Given, &c.

A Warrant for refusing to pay a Hackney Coachman his just Fare, &c.

London, to **W** Hereas Complaint hath been made unto me wit, (on Oath) by A. B. of, &c. Hackney Coachman, That on, &c. of this Instant, &c. he the said A. B. drove in his Hackney Coach one C. D. of, &c. from the Royal Exchange to Temple Bar, and on setting down the said C. D. there, he the said A. B. demanded his Fare of 1 s. as settled by Act of Parliament; but the said C. D. not only refused to pay the same, but beat and abused the said A. B. very much (or the said A. B. found his Coach cut and defaced, &c.) These are therefore to command you to apprehend the said C. D. if he be within the Limits, and to bring him before me or some other of his Majesty's Justices of the Peace, to answer the Premises, and to be proceeded against according to Law. Given, &c.

Coals.

K EELS and Boats at Newcastle carrying Coals shall be marked by Commissioners, &c. and if the Mark shall be removed or altered, then on Proof by one Witness on Oath before one Justice, the Offender forfeits 10 l. one Moiety to the King, the other to the Discoverer; to be levied by Distress, by Warrant of one Justice; and if that is not to be had, then to be committed for three Months without Bail.

6 & 7 Will.
c. 10. f. 7.

The

The Warrant to levy the Forfeiture.

To the Constable, &c.

Northumberland, **W** Hereas W. B. of, &c. hath been duly convicted before me, for * removing the Marks and Nails of the Keel (or Cart) of, &c. after the same was marked and nailed, and that the Mark was so removed, in order to frustrate the Intent of the Statute in that Case made and provided; for which Offence the said W. B. hath forfeited 10 l. These are therefore to require you forthwith to levy the said 10 l. by Distress and Sale of the Goods of the said W. B. rendering to him the Overplus, if any such shall happen to be: And hereof fail not. Given, &c.

* Or altering, or being privy to it (as the Case is).

See the Stat. 16 & 17 Car. 2. c. 2. about the Measure and Weight of Coals, and settling their Price by the Lord Mayor, &c. in London, &c.

A Warrant by two Justices to seize a Parcel of Coals sold by Measure or Weight, contrary to the said Statute, with double the Value, and to deliver a Moiety thereof to the Informer.

To the Constable of the Parish of St. Paul's Covent-Garden.

Middlesex, **W** Hereas it hath been proved unto us that A. B. of your said Parish, Ingrosser (or Retailer) of Coals, did on, &c. sell or expose to Sale ten Chaldron of Sea Coals of the Value of, &c. contrary to the Statute made in the 16th and 17th Years of the Reign of his late Majesty King Charles the Second, Intituled an Act, &c. And whereas the said A. B. hath been this Day convicted of the Offence aforesaid, pursuant to the said Statute: These are, &c. strictly to charge and command you, and every of you, That you or one of you do immediately upon Sight hereof, or as soon after as conveniently you may, seize the said ten Chaldron of Coals, and the double Value thereof, and forthwith deliver one full Moiety of the Value of the same unto H. T. the Prosecutor in this Behalf, to his own Use and Beboof; and also that you or some or one of you do dispose of, and distribute the other Moiety thereof to the Church-wardens and Overseers of the Poor of your said Parish, to the Use of the poor People of the said

Coals. Common Prayer.

Parish, according to the Directions of the said Act. Whereof fail not at your Peril. Given, &c.

Vide 3 Geo. 2. c. 26. §. 16. Giving Power to a Justice of Peace to examine the Offences within the Act, and to grant a Warrant for Recovery of the Penalty.

Common Prayer.

IN *Anno 2 Ed. 6. c. 1.* the Reformers intending to bring the Worshippers of God under set Forms, compiled a Book of Common Prayer, which was established by Act of Parliament in that Year.

But because several Things were contained in that Book, which shewed a Compliancy to the superstitious Humours of those Times, and some Exceptions being made to it by precise Men at home, and by *John Calvin* abroad; therefore two Years afterwards it was reviewed, in which *Martin Luther* was consulted, and some Alterations were made, which consisted in adding some Things, and leaving out others, as in the former Edition.

The Additions were, <i>viz.</i>	{	A general Confession of Sins to the Daily Service.
		A general Absolution to the truly Penitent.
		The Communion to begin with reading the Commandments, the People kneeling.
		And a Rubrick concerning the Posture of Kneeling; which was afterwards order'd to be left out by the Statute of the 1 <i>Eliz.</i> but is now again explained, as in 2 <i>Ed. 6.</i>
Left out.	{	The Use of Oil in Confirmation and Extreme Unction, Prayers for Souls departed.
		And what tended to a Belief of the Corporeal Presence in the Consecration of the Eucharist.

Afterwards, *Anno 5 Ed. 6. c. 1.* a Bill was brought into the House of Lords to injoin Conformity to this new Book, with these Alterations; by which all People were to come to those Common Prayers, under Pain of Church Censures; which Bill passed into a Law *Anno 5 & 6 Ed. 6.* but not being observed during the Reign of Queen *Mary*, it was again reviewed by a Committee of learned Men, *viz.* Mr. *Whitehead*, Chaplain to Q. *Elizabeth's* Mother; Dr. *Parker*, afterwards Archbishop of *Canterbury*; Dr. *Grindall*, afterwards

wards Bishop of *London*; Dr. *Cox*, afterwards Bishop of *Ely*; Dr. *Pilkington*, afterwards Bishop of *Durham*; Dr. *May*, Dean of *St. Paul's*, who was one of the former Committee; Dr. *Bill*, Provost of *Eaton*; and Sir *Thomas Smith*; and appointed to be used by every Minister, *Anno 1 Eliz. c. 2.* with some Additions which were then made, *viz.*

Certain Lessons for every Sunday in the Year; some Alterations in the Liturgy.

Two Sentences added in the Delivery of the Sacrament, intimating to the Communicants, that *Christ* is not corporeally present in the Elements, &c.

The Form of making Bishops, Priests and Deacons, was likewise added.

Some Alterations were made in the Rubrick in King *James's* Reign: And as for the Additions of Thanksgivings at the End of the *Litany*, the Prayer for the King and Royal Family, which were not in the last Book; those were done by the Authority of that King's Commission, and are still in Force by Virtue of his Proclamation, and so are the Prayers of the Inauguration of our Kings and Queens, and against the Gunpowder-Treason.

Upon these and other Statutes, several Things are to be considered;

1. The Punishment of a Minister for refusing to use, or depraving the Book of Common Prayer.
2. The Punishment of any other Person depraving it, and of such who shall hear, or be present at any other Form.
3. Who are bound to use it, and assent to it.
4. Who must provide it.

If he is convicted by Verdict, Confession or notorious Evidence of the Fact of refusing to use it, or using any other Form, or depraving it.

The Punishment of a Minister. Vide Prayer in Bail.

If Beneficed, { For the first Offence, by 2 & 3 *Ed. 6.* he forfeits to the King which of his Benefices the King will chuse: But *per Stat. 1 Eliz. c. 2.* loses his Spiritual Livings for a Year, and by both, Imprisonment for six Months, by the first Statute without Bail, and by the other indefinitely.

Second Offence, Deprivation and Imprisonment for a Year, by both Statutes.

Third Offence, Imprisonment for Life by the Statute of *Ed. 6.* and Deprivation and Imprisonment for Life by the said Statute of *Eliz.*

If

Punishment of any other Person depraving or being present at any other Form.

If not Beneficed.

First Offence, Imprisonment for six Months, but by the Statute of 1 *Eliz. c. 2.* Imprisonment for twelve Months.
Second Offence, Imprisonment for Life.

If any Person shall be convicted (as aforesaid), by Songs or otherwise, to have depraved it, or to procure a Minister to say any other Form, or have interrupted him to say the Service.

First Offence, *per Stat. 2 & 3 Ed. 6.* forfeits 10 *l.* to the King; and if not paid within six Weeks after Conviction, then Imprisonment for three Months instead thereof; but by the Statute of 1 *Eliz.* forfeits 100 Marks to the Queen; and if not paid (*ut supra*) shall instead thereof be imprisoned for a Year.

Notes; there must be a Conviction for the former Offence or Offences, to make it punishable as the second or third.

Second Offence, *per Stat. Ed. 6.* forfeits 20 *l.* to the King; and if not paid (*ut supra*) Imprisonment for six Months without Bail: But *per Stat. 1 Eliz.* forfeits 400 Marks to the Queen, and if not paid (*ut supra*) Imprisonment for a Year.
Third Offence, forfeits all his Goods and Chattels, and Imprisonment during Life.

Any Person convicted at the Assizes or Sessions to have wittingly heard, or to have been present at any other Form of Common Prayer than what is expressed in the Statute of 2 & 3 *Ed. 6.*

First Offence, Imprisonment for six Months without Bail.

Second Offence, Imprisonment for twelve Months.

Third Offence, Imprisonment for Life. 5 & 6 *Ed. 6. c. 1.*

Justices of Oyer and Terminer, of Assize, and Mayors and Head Officers of Corporations, have Power to hear and determine Offences against the Statute of 2 & 3 *Ed. 6.* The Prosecution must be at the next Assizes after the Offence committed; but *per Stat. 23 Eliz. c. 1.* Justices in Sessions have the like Power. Prosecution must be within a Year and a Day after the Offence.

Who are bound to use it, and to assent to it.

No Form of Prayer shall be used in any publick Place, other than according to the said Book.

Incumbent on a Benefice with Cure, residing on his Living (though he keeps a Curate) and not having a lawful Impediment to be allowed by the Ordinary, must himself once a Month read it, as by the said Book is appointed, or for every Offence forfeits 5 *l.* to the Use of the Poor. Conviction must be before two Justices, by his own Confession, or Oath of two Witnesses. 13 & 14 *Car. 2. c. 4. §. 7.*

If the 5 *l.* is not paid within ten Days after Conviction, then the Church-wardens and Overseers of the Poor may, by a Warrant from two Justices, levy it by Distress and Sale of Goods. *Ibid.*

No

No Person shall be a Lecturer, Preacher or Reader, with a *License* from the Ordinary, but must read the thirty-nine Articles, and declare his Assent thereunto, and must read the Service the first Time he preaches, and declare his Assent to it; and upon the first Lecture Day of every Month, must read the Service, and declare his Assent, as *per Stat. 13 & 14 Car. 2.* and if he refuse, is disabled to preach till he conform: But at Sermons and Lectures in Cathedrals and Colleges, 'tis sufficient, if a Lecturer declare his Assent to all Things in the said Book.

If any Person shall preach, being disabled (*ut supra*) before he conforms, two Justices, upon Certificate from the Ordinary, may commit him for three Months.

A Man was convicted for administering the Sacrament of Godb. 118. *Baptism* in another Form than prescribed by the Book of Common Prayer. He was indicted a second Time for the like Offence, and had Judgment to suffer Imprisonment for a Year, and to be deprived *ipso facto* of all his Spiritual Promotions; and upon a Writ of Error brought, this Judgment was reversed, because the first Conviction was not set forth in the second Indictment; for otherwise the second Conviction doth not warrant such a Judgment.

Indictment against a *Curate*, &c. for refusing to use the Common Prayers, and for speaking against the Common Prayer-Book; he was found guilty at the Assizes, and the Judge gave Judgment that he should be *deprived*; but upon a Motion in Arrest of Judgment, it was adjudged that both the Indictment and the Judgment were erroneous; first as to the Indictment, because it did not appear by it, that the Defendant was *Curate* of the Parish where he refused to use the Common Prayers; then as to the Judgment, 'tis true, the Statute said he shall be *ipso facto* deprived; but a temporal Judge cannot give Judgment of Deprivation, because 'tis a spiritual Act. *Goldf. 162.*

A Warrant against an Incumbent, for not reading the Service once a Month. On 13 & 14 Car. 2. c. 4. §. 7.

To the Church-wardens and Overseers of the Poor of the Parish of *H.* in the said County.

Suffex, to **W** Hereas J. S. Incumbent on the Benefice of *H.* with Cure in the said County, and residing on his said Living, and having no lawful Impediment allowed by his Ordinary, hath on the 3d Day of this Instant June been lawfully convicted before us, R. B. and W. N. two of his Majesty's Justices of the Peace for the said County, for that he the said J. S. did not in the Month last past publicly read the Com-
mon

13 & 14 Car. 2.
c. 2.

mon Prayers in the said Parish Church of H. in such Manner and Form as in and by the Book intituled, A Book of Common Prayer, &c. is appointed, and according as 'tis enjoined by the Statute in that Case made and provided; by Reason whereof, and by Virtue of the said Statute, he the said J. S. hath forfeited 5 l. to the Use of the Poor of the said Parish: These are therefore to require you, or some of you, to ask and demand the said 5 l. of the aforesaid J. S. and if the same shall not be paid to you, or some of you, within ten Days after such Demand and Conviction as aforesaid, then to levy the same by Distress and Sale of the Goods of the said J. S. rendring to him the Overplus. And hereof fail not. Given under our Hands and Seals, &c.

Commitment of a Lecturer, &c. for Preaching, being disabled, &c. by the Statute of 13 & 14 Car. 2. c. 4.

To the Constable of the Hundred of L. in the County of S. and to the Keeper of his Majesty's Gaol in the said County.

Suffex, to **W** Hereas upon a Certificate from the Ordinary wit, of the Diocese of C. directed to us R. B. and W. N. two of his Majesty's Justices, &c. it doth appear that J. S. therein named, being Lecturer of the Church of H. in the said County, hath preached there without a License by him had or obtained from his said Ordinary, and hath not read the thirty-nine Articles in his Presence, nor declared his Assent thereunto; and hath not, upon the first Lecture-Day of every Month since he hath been Lecturer there, read the Service appointed for that Day, and declared his Assent thereunto, pursuant to the Statute in that Case made and provided; by Reason whereof, and by Virtue of the said Statute, the said J. S. is disabled to preach, until he conform to the said Law: And whereas it doth likewise appear unto us, that the said J. S. after such Disability incurred as aforesaid, and before his Conformity, that is to say, on the third Day of this Instant June, hath preached in the Parish Church of H. aforesaid, contrary to the Form of the said Statute: These are therefore in his Majesty's Name to require you to apprehend the aforesaid J. S. and to convey him to the common Gaol of the said County, and to deliver him safely to the Keeper of the said Gaol, together with this Precept: Hereby also commanding you the said Keeper to receive the said J. S. into your Custody, and him safely there to keep for the Space of three Months next ensuing the Date hereof. Given under our Hands and Seals, &c.

Conies.

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Conies. See Game and Hunting.

ENTring wrongfully into a Ground inclosed; and *per* 22 & 23 Car. 2. c. 25. §. 4. though not inclosed, but which is used for breeding Conies; and chasing, taking or killing them, shall be committed for three Months, and afterwards pay treble Damages and Costs, to be assessed by Justices before whom convicted, and find Sureties for Good Behaviour.

Killing or taking them in the Night-time upon Borders of Warrens, shall pay to the Party grieved what the Justice shall think fit before whom convicted, and to the Overseers of the Poor of the Parish where the Offence is committed, not exceeding 10 s. or be sent to the House of Correction, not exceeding a Month; except such Person as shall be Owner of the Soil, lawful Possessor of the Ground or Persons employed by them. §. 5.

Conviction must be by Confession, or Oath of one sufficient Witness, within a Month after the Offence, and before one Justice of the Division. 22 & 23 Car. 2. c. 25. §. 7.

May appeal to the Sessions, whose Judgment is final. §. 9.

Conviction for killing Conies in a Warren upon 22 & 23 Car. 2. the Conviction sets forth that he killed the Conies *in eadem warrena adtunc existent' sola exclusa*, &c. It was argued that this Act only extended to Warrens uninclosed, and that it was 3 Jac. 1. c. 13. that extended to inclosed Warrens, and that gives no Power to Justices to convict, but the Party must be indicted; therefore this appearing to be an inclosed Warren, 'tis void. But *per Curiam*, The Statute Car. 2. extends to all Warrens whether inclosed or not, therefore the Conviction is good. *Hill. 1 Geo. 1. King and Weston.*

Taites was convicted for killing Rabbits in a private Warren by Inquisition taken before a Justice of Peace, and was fined 20 s. a Rabbit; and the Inquisition was quashed, because the Justices of the Peace have no Authority to set a Fine upon a Man for such Offence; for 22 & 23 Car. 2. c. 25. gives treble Costs and Damages, but no Fine; and 4 & 5 W. & M. c. 23. extends only to Game, which cannot be extended to Rabbits kept in a private Warren. *King and Yaites, H. 8 & 9 W. 3. 1 Raym'd 151.*

A Man who hath only Right of Common cannot kill Conies which destroy his Common, though he hath no other Remedy; the Reason formerly was, because the Commoner hath nothing to do with the Land, but to put in his Cattle; the Property of the Soil is in the Lord, and so long as the Conies

3 Jac. 1. c. 13. s. 2. the same Penalties by this Act as in 22 & 23 Car. 2. only that he is to find Sureties for his good Behaviour for seven Years or lie in Prison.

4 Leon. 7.
Cro. Jac. 195.
Haddesden and
Grizzle, S. P.
Cro. Jac. 229,
S. P. Sir J.
Horsley and
Hagberton.

Cro. Car. 388.
Hinsley and
Wilkinson, 553.

14 Geo. 2. c. 9.
f. 39.

Conies are in his own Land, he likewise hath a Property in them, and they may be called *Cuniculos suos* (his Conies); but the later Authorities are contrary, viz. That none can say whose Conies they are when they are on a Common, and that they being *feræ naturæ* (of a wild Nature) when they are out of the Warren, the Lord hath no Property in them till he takes them, and therefore the Commoner may kill them, but cannot have an Action on the Case, for that would be to create Multiplicity of Actions.

Officer or Soldier, who without Leave of the Lord of the Manor, shall take or destroy any Hare, Coney, Pheasant, Partridge, Pigeon, or other Sort of Fowls, Poultry or Fish, and shall be convicted thereof by the Oath of one or more Witnesses, before one Justice, every Officer shall forfeit 5 *l.* to the Poor of the Place, &c. and if Soldier shall be convicted, the Officer in chief shall pay 20 *s.* to be distributed as aforesaid; and if not paid within two Days after Demand, by the Constable or Overseers, he shall forfeit his Commission, which is by the Statute declared to be void.

See after Title **Deer-stealing**.

An Indictment upon the Statute of 22 & 23 Car. 2.

Middlesex, to **T**HE Jurors, &c. That J. O. of H. in
wit, the said County, Yeoman, on the four-
teenth Day of August in the fifth Year of the Reign, &c. with
Force and Arms, that is to say, with Staffs and Bills and other
offensive Weapons, at H. aforesaid in the said County, did
break and enter the Free Warren of R. B. about twelve of the
Clock in the Night of the same Day, and did hunt in the said
Free Warren with Lurchers and Pursnets without License, and
against the Will of the said R. B. and did take and carry away
fifty Conies then and there found, of the Value of twenty-five
Shillings, of the Goods and Chattels of him the said R. B. to
the great Damage of him the said R. B. and against the Peace
of our said Sovereign Lord the now King, his Crown and Dig-
nity, and also contrary to the Form of the Statute in such Case
made and provided.

Conjuratio-

Conjuration.

ANY Person convicted to have used Invocation or Conjuration of any Evil Spirit, or to have consulted, &c. any such Spirit, to kill, consume, or lame any Person; they with their Accessaries are Felons without Benefit of Clergy. 1 Jac. 1. c. 12.

So likewise any Person convicted to have, by Witchcraft, Charm, &c. undertaken to tell where Goods lost or stolen may be found, or where they are, shall be committed for a Year without Bail, and shall once in every Quarter of that Year stand in the Pillory.

This Act of Parliament is repealed by 9 Geo. 2. c. 5. which enacts that no Person shall be prosecuted for Witchcraft, Sorcery, Inchantment or Conjuration, or charging any other with such Offence. But Persons pretending to exercise Witchcraft, tell Fortunes, or by crafty Science recover stolen Goods, when convicted upon Indictment or Information shall be imprisoned for a Year without Bail, be pilloried once a Quarter; and if the Court thinks fit, give Sureties for their good Behaviour, and for want thereof be further imprisoned.

Conspiracy.

THIS is an Agreement between two or more, falsely and maliciously to indict an innocent Man; who after Acquittal by Verdict, hath two Remedies to punish the Offenders. Moor 816. Sir Anthony Ashley's Case.

(1.) By a Writ of Conspiracy, which is a Civil Action, in which Damages are to be recovered.

(2.) By an Indictment at the Suit of the King.

The Action will not lie, unless the Party is *legitimo modo acquietatus* (acquitted in a legal Way). Noy 116.

And as to this Matter, there is a very nice Case, viz. Conspiracy, &c. for that they falsely procured him to be indicted, and to be imprisoned, *quousque* (until) before such Judges *legitimo modo fuit acquietatus* (he was acquitted in a legal Way), and did not say, *inde acquietatus* (acquitted thereof): The Court was in some Doubt, because that Word was omitted, but certainly it could not be material; for having set forth that they procured him falsely to be indicted, &c. *quousque* (until) he was acquitted; this could not be intended of any other Matter but that for which he was indicted. 2 Cro. 230. Bell & Fox. Yelv. 161. S. C.

There

Conspiracy.

There are four Incidents to this Action ;

The Conspiracy
must be

Malicious,
False,
Declared by some * Prosecution,
Voluntary.

* My Lord Roll tells us, That a false Confederacy to indict another, is punishable by Indictment, tho' nothing is put in Ure. Roll Abr. 2 Part 77. Vide 1 Lev. 62. King & Kimberry.

The second Remedy against Offenders of this Nature, is by Indictment at the Suit of the King ; and upon Conviction, the Judgment is,

That they shall lose their Free Law, that is, they shall never be of a Jury, nor Witnesses in any Case ; shall never appear but by Attorney ; their Lands, Chattels and Goods shall be seized into the King's Hands, their Trees cut down and their Bodies imprisoned. *Staundf. Placit. Coron. 175. b. 3 Inst. 143.*

The Reason of this Judgment is, because the Offenders have conspired the Shedding innocent Blood, and that under a Pretence of Justice, by a Course of Law, which is made for the Protection of the Innocent.

But there have been other Judgments given against these Offenders : As for Instance.

Godb. 205.

An Information was brought by one *Miller of Kent* against an Attorney and another, for Conspiracy, maliciously to take away his Life, by accusing him for breaking open a Trunk, and taking out Money and a Lease, for which they indicted Mr. *Miller* at the Assizes ; it was found *Ignoramus* (not a true Bill) ; the Conspiracy was proved, and the Sentence was, That the Attorney should be degraded, and cast over the Bar ; that both should lose their Ears ; and be marked in the Face with the Letter C. to stand on the Pillory with Papers of their Offences, to be whipped, and each fined 500*l.* This Sentence was executed on them. *Anno 11 Jac.*

Moor. 817.

So where two conspired to accule Sir *Anth. Ashley* for a Murder done sixteen Years before. *Cantrell* was to be the Accuser, and Sir *James Creighton* articulated with him, That he should have a sixth Part of Sir *Anthony's* Estate, and that he would beg the Whole of the King. *Cantrell* agreed, and procured one *Smith*, who was Servant to Sir *Anthony*, to accuse both his Master and himself for putting Poison into Drink, which the Master commanded him to carry to one *Rice*, which he did, and so poisoned him. For this Fact he caused his Master and himself to be indicted, but afterwards discovered the Conspiracy, and *Creighton* was fined 1000*l.* and committed ; another of the Defendants was fined 300*l.* and to stand in the Pillory, and was burnt with a hot Iron on both Cheeks with the Letter F. and C.

Several Journeymen Taylors in *Cambridge*, were indicted for a Conspiracy to raise their Wages ; and being found guilty, they mov'd in Arrest of Judgment,

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To wit, That the Fact was laid in the Town of *Cambridge*, without setting forth in what County, and it shall never be intended that the Town of *Cambridge* is within the County of *Cambridge*, because this is a Criminal Case, where-
in Intendments are never allowed.

Besides, this Indictment ought to conclude *contra formam Statuti* (against the Form of the Statute), because by the Statute 7 *Geo. c. 13.* Journeymen Taylors are prohibited to enter into any Agreement for the Advancement of their Wages.

But adjudged that the Fact being laid within the Town of *Cambridge*, it shall be intended that the Town is within the County, and this in Order to support all inferior Jurisdiction; and this being an Indictment for a Conspiracy, 'tis not material to conclude it *contra formam Statuti* (against the Form of the Statute), because Conspiracy is an Offence at Common Law. *Mich. 1721.* The King *against* Journeymen Taylors of *Cambridge*; and *vide* for Conspiracies to support Law Suits, *Moor 562, 788.*

The Defendants were indicted, for that they *per Conspirationem inter eos habitam*, gave the Husband Money to marry a poor helpless Woman, who was an Inhabitant of the Parish of *B.* and incapable of Marriage, on purpose to gain a Settlement for her in the Parish of *A.* where the Man was settled; cited 1 *Lew. 62. Syd. 68* That Conspiracy to charge a Man as Father of a Bastard Child is indictable: So an Information lay for a Conspiracy to impoverish the Farmers of the Excise. *Syd. 174. King and Starling.* Upon Motion to quash this Indictment the Court said, That the quashing an Indictment upon Motion was a discretionary Power in the Court; but that the Defendant here had not shewn any Thing to induce the Court to quash it; and if the Matter was doubtful, the Defendant must plead or demur, but the Indictments for Conspiracies are never quashed: That a bare Conspiracy to do a lawful Act to an unlawful End is a Crime, tho' no Act was done in Consequence thereof. Suppose there was a Conspiracy to let Lands of 10 *l.* a Year to a poor Man, in order to gain him a Settlement, or to make a Certificate-man a Parish Officer, or a Conspiracy to send a Woman big of a Bastard Child into another Parish to be delivered there, and so to charge the Parish with the Child, certainly these are Crimes indictable, and the Sessions have Jurisdiction in Case of Conspiracies.

This Indictment was quash'd for Want of Averment, that the Woman was last legally settled in the Parish of *B.* *Mich. 11 Geo. 1. King and Edwards.*

This Offence is not very common, and I can find but few Precedents of any Indictments for it: There is one in my Lord *Coke's* Entries, for conspiring the Death of a Privy Coun-
Vol. I. Q.

Conspiracy. Constable.

Counsellor; which, with a little Variation, may serve for conspiring the Death of a Person of meaner Degree.

An Indictment for Conspiring the Death of another.

Cok. Entr. 173. Suffex, to **T**HE Jurors, &c. That T. A. not having God wit, before his Eyes, but being seduced by the Instigation of the Devil, on the twentieth Day of May in the fifth Year of the Reign, &c. and on divers Days and Times before and afterwards, at Lewes in the said County, and in divers other Places in the said County, did unlawfully, voluntarily and maliciously encourage, excite and procure J. F. of, &c. and very many other Subjects of our said Sovereign Lord the King, and did then and there conspire with them to murder H. G. of &c. Esq; against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Constable.

4 Inst. 123.

TIS not material in this Place to inquire, whether the Word or the Office is of Saxon or Norman Original. Some are of Opinion, that upon the Increase of the People, the Sheriff alone could not take sufficient Care of the Peace of the County, and therefore it was divided into Hundreds; and a High Constable was appointed over each Hundred to preserve the Peace; but 'tis incertain when this Division began; for Mr. Selden differs from the common Opinion of other Writers, who affirm it to be in the Reign of King Alfred, and he tells us it was before that Time.

But notwithstanding this Division, (be it when it will) neither the Sheriff, together with the High Constable, could in After-times take due Care of the Peace in the County and Hundreds over which they presided; and therefore Petty Constables were appointed for that Purpose in each Town, Village and Parish of every Hundred, to be assisting to the High Constables.

'Tis also incertain when this Division began; it seems to me to be very antient, and that both High and Petty Constables are Officers at Common Law; that the one was long before the Statute of Winton, and the other before the Beginning of the Reign of Ed. 3. so that such old Statutes, which first mention this Officer, do only recite the Common Law.

He is not named in the Statute of 3 & 4 W. & M. c. 10. about Deer-stealing; but a Person being convicted of that Offence

1 Sa'k. 380.

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ence, the Justice, &c. directed a Warrant to the Constable to levy the Penalty, who levied it accordingly, and did not return his Warrant, for which he was indicted, and found guilty; and that Indictment being removed into *B. R.* by *Cartiorari*, it was resolved that at Common Law the Constables were subordinate Officers to the *Conservators of the Peace*, and so they are now to the Justices, &c. and that where an Officer neglects his Duty, he is indictable for it at Common Law; and in this Case he ought to return his Warrant, or certify what he has done upon it, otherwise the Prosecutor cannot have the Effect of his Prosecution; and that though this Indictment concluded *contra pacem* (against the Peace), that did not hurt, because this was only a Nonfeasance.

It may be at the Leet, either by the Steward himself, or by Presentment of the Grand Jury there; but this must be warranted by Custom; and where a Court-Leet is usually kept; and in such Case the Justices of the Peace cannot interpose.

If he is present when chosen, and shall refuse the Office, the Steward may fine him; if absent, the Homage may present his Refusal at the next Court, and then he shall be amerced; and if he is present and accept the Office, he may be sworn in the Leet; if absent, he upon Notice given by the Steward must take the Oath before a Justice, but you cannot distrain for the Penalty without a Custom.

Where Neglects or Miscarriages are, either in keeping of such Courts or chusing them, the Justices at their Quarter-Sessions may appoint and swear a High Constable; and this is the usual Course at this Time; but in Case of Refusal, Death, or Removal, one Justice of the Peace may chuse and swear another.

'Tis true, they may be sworn at any other Time by a Warrant from the Sessions; and they may also be chosen out of the Sessions by the greater Number of Justices of a Division: But this is not usual.

He is chosen by the People of the Parish; only in *Wales* two Justices, *Quorum unus*, may, by Virtue of the Statute of *H. 8.* appoint this Officer.

He must be an honest, understanding and able Man, both of Body and Estate, and not of the meaner Sort; and therefore it has been held, that he is not to be chosen by House by Custom, if not fit to execute the Office.

He is likewise to be resident where chosen; and if he is thus qualified, two Justices upon Complaint, may appoint another.

But 'tis now ruled, That a Custom for every Inhabitant to serve by Turns is good; for if it happen on a Woman, she may hire one to serve. *1 Sid. 355. 2 Hawk. P. C. 63. Bar. A. 439.*

How and where chosen.*

Cro. Car. 567. 5 Mod. 130. Salk. 175. But he can't be lawfully committed without more. 2 Hawk. P. C. 64.

Petty Constable, where chosen, and how he ought to be qualified.

Who are exempted, who not.

Deputy, whether he may make one.

Moor 845.
3 Bullst. 77.
1 Rol. 274.

7 Jac. 1. c. 5.
Cro. Car. 567.
Co. Ent. 572.
5 Mod. 130 Salk.
174. 8 Co 38.
Refusing to serve.
Style 124. You must alledge that he had Notice.

Action brought against him.

Power of Justices upon Death or Removal, or Continuance in Office above a Year.

Attornies, Clergymen, Justices of the Peace, Infants, Lawyers, Madmen, Physicians, poor, old and sick Persons.

But Tenant in Antient Demefne is not. 1 Vent. 344.

Formerly it has been doubted, whether he might make a Deputy, but now it is allowed; but *respondeat superior* for his Miscarriage, unless the Deputy is sworn and allowed by the Court. 1 Sid. 355.

Dissenter, chosen Constable, may make a Deputy, per Statute 1 Will. & Mar.

An Indictment for not finding sufficient Person to serve the Office of Constable is not good, unless the Indictment shews that the Party refused to serve it himself. 1 Keb. 416. 2 Hawk. P. C. 64.

Justices may bind him over to the Assizes or Sessions, and there he may be indicted and fined; but you must alledge the Place where he was required to take the Oath, and before whom he refused to be sworn, and not *ad Sessionem* (at the Sessions) generally; otherwise it may be quashed. 1 Keb. 418. 1 Mod. 24. 13. Aley 78. 2 Rol. Rep. 78. 2 Saund. 291. Sid. 272. Style 394. 2 Hawk. P. C. 64.

It must be laid in the proper County where the Fact is supposed to be done; and if 'tis brought against him for any Thing in the Executing his Office, he may plead the General Issue, and give the special Matter in Evidence; and if the Plaintiff is nonsuited, or discontinue, or a Verdict for the Defendant, he shall have double Costs. 7 Jac. 1. c. 5. 21 Jac. 1. c. 12. §. 4.

13 & 14 Car. 2. c. 12. §. 15. reciting the Failure in the Execution of the Laws against Vagabonds, for want of Officers, the Lords of Manors not keeping their Court Leets every Year for making of them, enacts, in case any Constable, &c. shall die, or go out of the Parish, any two Justices of the Peace may make and swear a new Constable, &c. till the Lord shall hold a Court, or 'till the next Quarter-Sessions, who are to approve of the said Officers, or appoint others as they think fit; and if any Officer continue above a Year in his Office, that the Justices of Peace in their Quarter-Sessions may discharge him, and put another fit Person in his Place 'till the Lord of the Manor shall hold a Court.

The Sessions may remove a High Constable as well as a Petit Constable, for they are best Judges in these Cases.

His Duty is to be considered under these several Heads following, *viz.*

Affrays.

Affrays.	Hedge-breaking.	Plague.
Ale-houses.	Highways.	Prisoners.
Arms.	Horse stoned.	Rent.
Bridges.	Hue and Cry.	Riots.
Clothiers.	Juries.	Rogues.
Customs.	Labourers, <i>vide</i>	Sabbath.
Deer-stealing.	Servants.	Superfedeas.
Dogs, Setting-Dogs.	Malt-Makers.	Swearing.
Escapes.	Measures.	Tobacco Plant-
Excise.	Militia.	ing.
Felons.	Ministers disturbed.	Vagabonds.
Fish.	Peace.	Watches.
Forcible Entry.	Papists.	Warrants.
Gaming-houses.	Physicians.	

And *vide* these several Heads for the Acts of Parliament that give the Constables such Powers.

And first his Duty concerning Affrays, and therein what ^{1. Affrays.} is to be done to those who fight in his Presence.

Assaulting, Threatning to kill or beat another in his Presence, or whatever is a Breach of the Peace, he may carry the Offender before a Justice of Peace without a Warrant; but if the Fighting is over, he must have a Warrant, and this is to find Sureties for his good Behaviour.

If the Quarrelling or Fighting is not in his Sight, and he is informed of it, and refuses to go to keep the Peace, he may be presented by the Grand Jury at Sessions, and fined.

He may command such to depart; and if they refuse or make any Resistance, he may justify the Beating of them, may call others to his Assistance; and if either he or they happen to be killed 'tis Murder.

He may break open the Doors to see the Peace kept.

If any Person shall be wounded in fighting, he may carry the Offender before a Justice of Peace, who may bail or commit, &c.

Most of the Things above-mentioned the Constable may do by Virtue of his Office; for before Justices of Peace were made, he was *Conservator Pacis* (Keeper of the Peace), but he could not take Security by Recognizance or Bail, because he was not an Officer on Record: He might put a Man in the Stocks who broke the Peace in his View, but he could not arrest a Man to find Sureties of the Peace upon any Complaint made to him, unless he did actually see the Peace broken. *Owen 105.*

A Man brought a Child about two Months old to the Church, and left it there, designing it should perish; the Constable put him into the Stocks, and kept him there till

he agreed to take the Child ; and this was held justifiable, it being to prevent a Felony. *Moor 284. Keale and Carter.*

The Punishment of a Constable for neglecting to obey a Warrant from a Justice of Peace, consists in the Forfeitures following, *viz.*

Alehouses un-
licensed.

If he doth not levy 20 s. to the Use of the Poor upon such who keep unlicensed Ale-houses, which Distress he may sell after three Days ; and if no Distress, then if he doth not whip the Offender, one Justice may commit the Constable without Bail until the Alehouse-keeper is punished, or until the Constable pay 40 s. to the Use of the Poor.

If an Alehouse keeper sells less than Measure, *viz.* full Quarts ; then if the Constable doth not levy 20 s. he is to forfeit 40 s. to be levied by Warrant from one Justice ; and if no Distress, to be committed.

If an Alehouse-man suffer Townsmen to be tippling, and the Constable having a Warrant doth not levy the 10 s. shall forfeit *ut prius*, &c. If no Distress can be had, he must certify that Default within twenty Days, or forfeits 40 s. *ut prius*.

Upon those convicted of Tippling, he must levy the Penalty of 3 s. 4 d. or if he neglect, having a Warrant for so doing, forfeits 10 s.

Upon those convicted of Drunkenness, he must levy 5 s. for the Poor ; if the Party is not able to pay it, he must sit in the Stocks six Hours, &c.

If he pay, or offer to pay ready Money, and is refused ; a Constable may cause him to be indicted next Sessions, and there he may be fined and committed.

Arms.

He may take Arms from them who ride or go armed in Terror of the People, and may carry such Persons before a Justice of Peace to find Sureties.

They must assist such Persons who have a Warrant from the Lord Lieutenant or Deputy, to search for Arms, &c. which must be in the Day-time, unless in Towns ; and if resisted, may enter with Force.

Bridges.

Where a Common Bridge is in Decay, and it cannot be known who or what Lands are to repair it, the Constable and two of the most able Inhabitants in the Parish must assess, and four Justices must allow such Assessment. *Vide Bridges.*

Clothiers.

They must pay Work-folks ready Money, and the Work-folks must perform their Duty in their Occupation, or forfeit double Damages to the Party grieved ; and the High Constable of a Hundred may hear and determine Complaints of the Clothiers and Work-folks, and may commit the last till they make Satisfaction for the Damages.

High Constable may search for, and seize Ropes, Winches, &c. used for unlawful Stretching of Cloths ; and if resisted, the Party forfeits 10 l.

A Con-

A Constable must upon Request, assist such Persons who Customs. have a Warrant from the Lord Treasurer, Barons of the Exchequer, or Chief Magistrates of Ports, to search for Goods which have not paid Custom; and he may (if within a Month after the Offence) enter into any House in the Day-time; and if resisted, break it open.

He must be assisting to all Persons appointed by the King to collect or manage his Customs.

They forfeit 20 *l.* being convicted before one Justice, either by Confession, or Oath of one Witness, of Hunting, Taking, Killing, Wounding of Red or Fallow-Deer, in any Place inclosed for keeping Deer; and 30 *l.* for every Deer taken, wounded or killed: These Penalties the Constable is to levy by Warrant from the Justice of the Peace by Distress; or may detain an Offender, not exceeding two Days, if he do not presently pay the Money due upon Conviction, till he can make a Return of his Warrant of Distress. Deer-stealers.

A Constable was indicted, setting forth that one *N.* was convicted of Deer-stealing upon the Stat. 3 & 4 Will. c. 10. and that the Defendant being a Constable, the Justice directed his Warrant to him, to levy the Penalty, which he did, but had not returned the Warrant, or made any Certificate thereof; upon Not guilty pleaded, he was found Guilty; and the Record being removed by *Certiorari*, it was adjudged, that though the Constable is not named in this Statute, yet the Justices may command him to execute the Warrant; because as at Common Law a Constable was a subordinate Officer to the Conservators of the Peace, so he is now a proper Officer to the Justices; that where an Officer neglects his Duty incumbent on him either by the Common Law or Statute, he is indictable; that the Constable need not return the Warrant itself, because it may be necessary for him to keep it in his own Defence; but then he ought to certify what he hath done upon it, otherwise the Prosecutor is at an End of this Prosecution. 1 Salk. 380. Queen and Wiat.

He may enter any suspected Place by a Warrant from one Justice of Peace, and carry away Venison, Skins of Deer, Toils, &c. and the Offender before the Justice of the Peace, to give an Account how he came by them.

A Constable may, by Warrant from two Justices, search any suspected Houses of Persons who have no free Warren, or who are not Lords of Manors, or who have not an Inheritance of 40 *l.* or a Freehold of 80 *l.* per Annum, or who is not worth 400 *l.* and keep Dogs or Nets, &c. and may kill and destroy them. Dogs, &c. vide Game.

If he suffer a Felon to escape before he is actually in Custody, 'tis a Misdemeanor, for which he may be indicted and fined; but if he was actually taken, and then he voluntarily suffer him to escape, or destroy himself, 'tis Felony in the Constable; what Felony Escapes. But he must set forth for

he was taken, and when it was committed and where. Ploughman's Case.

Cro. El. 752.

Cro. El. 200.

Bouche's Case.

Constable; but if the Escape is by Negligence, or involuntary, 'tis only finable; but the Place where the Party was taken, and where he escaped, must be alledged in the Indictment.

If he discharges any Person taken upon Suspicion of Felony, 'tis justifiable if no Felony was committed, but otherwise he must not discharge him, tho' he knows that the Party is innocent; but it must be done by due Course of Law.

He may put a Felon into the Stocks, and lock him in, or put Irons upon him, or pinion him, to prevent Escapes when he is about to carry him before a Justice of Peace, or to Gaol.

Excise.

Officer of Excise must have a Constable when he enters into a Brewhouse by Night to gauge Fats or Vessels.

A Constable by a Warrant from Justices is to levy the Penalties on the Offenders against any Law of Excise, by Distress, &c. and if none, &c. may carry him to Gaol.

Maker or Retailer of Vinegar, Cyder, &c. for Sale, refusing a Gauger to enter in the Night-time with a Constable, forfeits 15 *l*.

Brewer so refusing forfeits 20 *l*.

Exciseman suspecting secret Conveyance of Worts may upon Request, and in Presence of a Constable, break open a Door in the Day-time; and if opposed, forfeits 20 *l*. by the 7 & 8 Will. c. 30.

Felons.

A Constable is bound *ex Officio* (by Virtue of his Office) to endeavour the Taking of Felons, and may raise Men to assist him; he may likewise apprehend upon Suspicion, and upon Complaint or common Fame, may search suspicious Houses.

If a Felon fly, the Constable may seize and make an Inventory of his Goods, and send Hue and Cry after him; that is, he may raise the Town at any Time, and give the next Constable Notice: The Neglect is finable by the Justices.

If upon such Flight he is apprehended in another County, the Felon must be committed where taken, and not where the Fact was done.

Two Justices, *Quorum unus*, are to set a Tax upon every Parish in a Hundred, where Damages are recovered against any one or more Inhabitants of that Hundred, upon the Statute of *Winton*; and the Constables of every Parish are to set a Tax upon every Inhabitant of those Parishes where they refuse to contribute, and may levy the same by Distress, &c.

Fish.

Those who fish in Nets of less Meshes than three Inches and an Half from Knot to Knot, or other Engine, to destroy the Breed of Fish along the Sea-Coast, or in any Haven or Creek, or within five Miles thereof, forfeit 10 *s*. to be levied by the Constable by Warrant from one Justice.

They

They are to search (by like Warrant) in *Shropshire*, *Worcestershire*, and *Gloucestershire* for any unlawful Nets used to take Fish in the *Severn*, and to seise such Nets, and to carry them to the Quarter Sessions.

If he refuse to assist the Justice in removing the Force, or Forcible Entry, carrying the Offender to Gaol, he may be committed himself, and fined.

He must once a Month search Houses where unlawful Games. Games are kept, as Tables, Tennis, Bowls, &c. and may commit the Master of the House, and the Gamesters, till they give Sureties not to do the like again; if the Constable neglects, he forfeits 40 s. for every Default.

He may, by Warrant from one Justice of Peace, enter and search the suspected Houses of any Person not qualified; and if he find any Game there, shall carry the Offender before a Justice of Peace. 4 & 5 W. & M. c. 23. Vide Game.

Convicted by Oath of one Witness before a Justice of Peace, Hedge-break- and their Procurers and Receivers, knowing the same, must crs. give the Party Satisfaction; if they cannot, then a Justice of Peace must commit them to the Constable, who must whip them for the first Offence; if the Constable neglect, then he may be committed without Bail, until the Offender is whipped. 43 Eliz. c. 7.

He hath Power to apprehend suspected Persons for carrying Bundles of Wood, &c. and may by Warrant from one Justice of Peace enter into the Houses of such suspected People; and if they find any, then to take the Offender, and those in whose Houses, &c. the Wood is found, &c. and carry him before a Justice of Peace. 15 Car. 2. c. 2. §. 2.

He must on every *Tuesday* and *Wednesday* in *Easter Week* call together the Inhabitants, and chuse two Surveyors for the next Year; and for his Neglect may be fined by the Justices in Quarter Sessions: Which Fine is to be estreated by the Clerk of the Peace, and that shall be a Warrant to the High Constable to levy it; and if no Distress be found, or he do not pay the Fine within twenty Days after Demand, forfeits double so much. Highways.

He must likewise appoint six Days between that and *Midsummer*, for amending the Ways, and the next *Sunday* must give Notice of those Days in the Church, under like Pain: This was enjoined by former Statutes.

But now by the Statute of 3 & 4 W. & M. Constables, &c. and Inhabitants, must meet the Day after *Christmas Day*, and the greater Part of them so met must agree on a sufficient Number of Men who have 10 l. per Ann. or are worth 100 l. or rent 30 l. per Ann, and if no such, then of the most sufficient Inhabitants; which Number of Lists the Constable must return to the Justices at a Special Sessions, on the third Day of *January* following; and if not held then, must

be held within fifteen Days after ; and Justices in such Cases must give the Constables ten Days Notice ; and then the Justices may, under Hand and Seal, appoint one or more Surveyors for every Parish within that Division, &c. and the Constable must serve Surveyors with the Justices Warrant within six Days after Appointment ; and not returning such List as aforesaid, forfeits 20 s. &c.

Horses stoned. A Constable must assist such who call him to seize stoned Horses put into Commons where Mares are usually kept, which Horses are not (at the Age of two Years) fifteen Hands high ; the Horses must be brought to the next Pound, and measured by a Constable in the Presence of three Men ; if he refuse to measure, forfeits 40 s.

In Fen-Grounds the Horses may be but 13 Hands high.
Hue and Cry. A Constable is to raise Hue and Cry upon Notice, and describing the Felon, and telling which Way he is gone ; and for this Purpose he may call upon the Parishioners to assist him in the Pursuit of the Felon to the next Constable, and he to the next, &c. and in the mean Time to make an Inventory of his Goods in the Presence of his Neighbours : If he refuse to pursue the Offender, he may be indicted, &c. but the Place where he gave Notice must be set forth in the Indictment. *Cro. Eliz.* 655.

Cro. Eliz. 654. **Crouther's Case.** He was indicted for that a Burglary was committed by Persons unknown, and that J. S. gave him Notice thereof, and required him to make Hue and Cry, which he refused : Exception was taken to the Indictment, because the Prosecutor did not alledge where he gave him Notice ; and this was held a material Exception.

Juries. Constables, &c. must every Year at *Michaelmas* Sessions, give in a List of the Names and Places of Habitation within their respective Limits, of all Persons qualified to serve on Juries between the Age of 21 and 70 Years ; and if he neglects, forfeits 5 l. to the King.

The Qualifications are 80 l. *per Ann.* for 2 Grand Jury-man, and 10 l. *per Ann.* for a Petty Jury-man. 7 & 8 W. 3. cap. 32.

See 3 Geo. 2. Title *Challenge*.

Labourers. A Constable, *ex Officio* (by Virtue of his Office) may in Hay or Corn Harvest, set any ordinary Tradesman on Work by the Day, being required by those who want Labourers, and put them in the Stocks for two Days and a Night, if they refuse ; and the Constable neglecting his Duty herein forfeits 40 s. 5 *Eliz.* c. 4. Vide *Apprentices*.

Malt. He is bound to search and view Malt made to be sold, and if it be not steeping and drying three Weeks ; if Half a Peck of Dust is not sifted or fanned out of every Quarter ; if it be made of Mow-burnt Barley, or spired, or good and bad mix'd together ; besides the Penalty inflicted, the Constable, with the

the Advice of one Justice, may sell the same at such Rates as the Justice shall please.

Measures. *Vide* Weights.

They are to levy the Money charged upon any Person by *Militia*. the Lord Lieutenant or his Deputies, for the providing Arms for Horse and Foot Soldiers; and if no Distress is to be found, may by Warrant from the Lord Lieutenant, &c. commit the Offender, until he make Satisfaction.

A Constable *ex Officio* (by Virtue of his Office) may apprehend the Offender, and carry him before a Justice of the Peace.

Oath. *Vide* Presentment.

Constables in *London*, and within seven Miles, are to be assisting to the President of the College of Physicians, and such who shall have any Authority from him, &c. to put the Laws in Execution concerning the College: The Neglect is a Contempt to the King. *Physicians.*

He may command any Person infected to keep within his House; and if after such Command he wilfully go abroad, having a Sore upon him, 'tis Felony; and if no Sore, he may be punished as a Vagabond, and bound to his Good Behaviour for a Year. *Plague.*

If he neglects to levy the Money appointed by Justices to relieve the Poor infected, forfeits 10 s. for every Offence.

A Constable is to certify to the Quarter-Sessions the Names of Popish Recusants convict, who within twenty Days after they arrive to the Place of their Birth (if they have no certain Abode elsewhere) give in their Names to him; which they are enjoined to do, and the Minister is to enter their Names in a Book for that Purpose. *Popish Recusants.*

They must once a Year present to the Quarter-Sessions those who absent themselves for the Space of a Month from Church, and the Names of their Children above nine Years old living with their Parents, and such Servants as they retain; or forfeit 20 s. for every Default. *1 Jac. c. 4.*

He by Warrant from a Justice of Peace may sell the Offender's Goods to defray his Charges, and of those who carry him to Gaol; but such Goods must be appraised by some Inhabitants of the Place. *Carrying Prisoners to Gaol.*

If the Offender hath no Goods, then the Town where he was apprehended must be at the Charge; and the Constable, &c. and three Inhabitants may impose a Tax on every Inhabitant; which being allowed by a Justice of Peace, the Constable by Warrant may levy it on those who refuse; and, the Distress being appraised by four Inhabitants there, may sell it.

If a Constable be sued, he may plead the General Issue, and shall have treble Damages besides Costs, if he recover.

In conveying a Felon either before a Justice or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Escape.

Presentments. Before I treat of his Presentments, I shall mention his Oath, *viz*,

The Constable's Oath.

YOU shall swear, That you shall well and truly execute the Office of a Constable, or Headborough, for the Town, or for the Parish of H. for the Year ensuing, and until another be sworn in your Room, or until you shall be legally discharged thereof.

This Oath is now administer'd for the Shortness of it, but by the other Oath he was usually sworn to these Particulars, *viz*.

Affrays to suppress and present.	Idle Persons punished.
Armed Men to arrest.	Night-walkers to punish.
Barretors to apprehend.	Peace to keep, &c.
Bloodshed to present.	Rescues to present.
Drunkenness to present.	Rioters to suppress and apprehend.
Felons to apprehend.	Rogues to punish.
Gaming-houses and Gamesters to present.	Vagabonds.
Hue and Cry to see made.	Warrants to execute.
	Watch to keep.

And all other Things relating to his Office, according to his Ability.

This he is bound to do, but few make true Presentments of these Offences within their Liberties; they make Returns formally, and bring them to a Justice to sign, and carry them to the High Constable, who makes Oath that he had them from the Petty Constable: And they are not altered when they signify nothing.

It hath been lately questioned, Why a High Constable should be sworn to a Matter of Form, and not a Petty Constable to the Substance of Return? Which, as a late Author observed, ought to be carried to a Justice some Time before the Sessions, to be examined to the Truth of every Article.

Few Parishes there are, but what have Inmates and unlawful Cottages; and this must unavoidably fall under their Observation.

Rent.

A Constable must assist the Party distraining, and swear two Men to appraise the Goods, and the Overplus, after Debts satisfied, may be left in his Hands.

He

He is *ex Officio* (by Virtue of his Office) to suppress all Riots. Riots, and to commit the Offenders, and all such who break the Peace.

A Constable is to endeavour to seize Rogues, Vagabonds, Rogues. &c. wandering and begging within their Liberties, or forfeits 10 s. If any Person bring a Rogue to him, he must receive him, and see that he is punished, or forfeits 10 s. to be levied by Warrant from two Justices. *Vide Vagrants.*

He must punish him thus, *viz.* Being assisted by the Minister of the Parish and one more, he must cause the Vagrant to be stripped naked from the Middle upwards, and whipped till he bleed; then he must send him to the Place of Birth; and if that is not known, then to the Place of his last Abode for one Year, before Whipping; and if that is not known, then to the Town through which he passed last unpunished; and if it cannot be known there where he was born or dwelt, then to the House or Correction, &c. to be employed in Work or in Service for a Year.

A Constable, &c. is to give him a Testimonial of the Day and Place of his Whipping, and if he is negligent, he forfeits 10 s. Or such Constable who doth not receive a Rogue, who is to be convey'd from one Town to another till he comes to the Place of his Birth, &c. he forfeits 5 l. or if he receives him, and doth not convey him to the next Constable, the like Penalty. 39 *Eliz. c. 4.* *vide* what Alterations by the latter Vagrant Acts.

He must levy the Penalty of 3 s. 4 d. by Warrant from one Justice, of such who use unlawful Games, and if he cannot distrain, must put the Offender in the Stocks for three Hours.

Those who on that Day keep or resort to Bowling, Church-Ale, Dancing, Ringing, or any Sport whatsoever, forfeit 5 s. if above fourteen Years old, if under 12 d. which the Constable must levy by Warrant of one of the Justices of the Peace by Distress; and if no Distress can be taken, then to be put three Hours into the Stocks. Sabbath.

He must likewise levy 6 s. by Warrant on a Butcher, who shall kill or sell Flesh on that Day.

Being convicted thereof, if the Offender is a Servant or Swearing Labourer, &c. forfeits 1 s. to the Poor, and every other Person 2 s. and double for the second Offence, and treble for the third, to be levied by Warrant of one Justice and Constable, &c. 6 & 7 *W. & M. c. 11.*

If a Constable have a Warrant to execute for Sureties of Peace, and afterwards has a *Superseas* from the Court of Chancery, or from another Justice, &c. to discharge the Sureties; yet if he will persist to have the Party find Sureties, and he refuse and is detained, 'tis false Imprisonment, &c. Superseas.

A Constable, &c. upon Information of planting above Half Tobacco. a Pole of Tobacco, must within ten Days destroy it.

Constables

Constables must cause Night-watches to be set from *Whitsunday* till *Michaelmas*, from Sun-set to the Rising thereof, with four Men or more, who must be able, and Inhabitants of the Place, and watch by Turns; if they refuse, the Constable may complain to a Justice of Peace, who may bind the Party refusing to Good Behaviour.

Sretton and
Brown, Cro.
El. 204.

A Constable appointed a Man to watch, and because he refused, he put him in the Stocks: In an Action of false Imprisonment, the Defendant justified as Constable, but did not shew that the Plaintiff was *an Inhabitant of the Town*; for he might be a Stranger, and then he could not appoint him to watch, nor put him in the Stocks for refusing, but must complain to a Justice of Peace.

Warrants to
execute.
2 Hawk. P. C.
82.
Skyn. 568.
Crompt. 147.
14 H. 8. 16.

He must not dispute, but execute them; and if the Justices exceed their Authority, the Constable is excused.

But if the Justice of Peace sends a Warrant to execute where he hath no Authority, or where he is not a proper Judge, a Constable may be punished if he execute it.

So if it is plain that the Warrant is mistaken in the Penalty, or if it command the Constable to do something out of his Precinct.

1 Salk. 176.
Carrh. 508.
1 Raym. 545,
736.

If the Warrant is directed to the Constable, *by Name*, commanding him to execute it, though he is not compellable to go out of his Parish, yet he may if he will, and shall be justified by the Warrant in so doing; but if it is directed to all Constables *generally*, it shall be taken respectively, and in such Case a Constable cannot execute it out of his Precinct.

6 Co. 54.
9 Co. 69.

He need not shew his Warrant, but may acquaint the Party with the Contents of it.

Dyer 241.
2 Keb. 705.

If he apprehend a Person without a Warrant, and obtain one afterwards, it is false Imprisonment.

2 Hawk. P. C.
81.

If he let the Person go upon his Promise to return and appear before the Justice of Peace, he cannot retake him by Virtue of his first Warrant; but if the Party escaped, he may pursue him, though in another County, and bring him back to the Justice of Peace.

If there are two Persons of one Name, and the same Addition, and the Constable takes a wrong Person, it is no false Imprisonment.

But if the Warrant is against a particular Person by Name, and he apprehends another, who is really the Offender, such Taking is wrongful, and the Party may have his Action of false Imprisonment, but will recover but little Damages.

A Man may be bound to his Good Behaviour for any Abuse or Contempt to the Justice's Warrant, and may be indicted and fined for it.

In Cases of Treason, Felony, or Breach of the Peace, a Constable may by Warrant from a Justice of Peace break open an House to take the Criminal; but first he ought to require the

the Opening of the Doors, and to acquaint the Person for what Purpose he came thither.

If he is indicted for not executing of a Warrant, you must shew some particular Act of Disobedience, and not generally, that he did not execute it. *Trin. 20 Car. B. R.*

He may justify the Detaining an Offender for a Day, by the Command of a Justice of Peace without a Warrant, not having an Opportunity then to examine him. *Moor 408.*

Broughton and
Mulhoo.

The Constable, &c. on Notice of a Robbery from any Person, shall with the utmost Expedition make fresh Suit and Hue and Cry after the Felon or Felons by whom such Robbery shall be committed, on the Forfeiture of 5 *l.* for every Refusal or Neglect; the one Moiety to his Majesty, and the other to the Person suing for the same within six Months. 8 *Geo. 2. c. 16. §. 11.*

A Warrant or Superseas for discharging of a Petty Constable, and to swear another.

GEORGE the Second, &c. *To the Sheriff of Suffex, and also to the Chief Constable of the Rape of Lewes, and to each of them, Greeting: Because for certain Causes moving us, we have caused to be discharged R. N. and R. W. Constables of the Town of H. therefore we command you and each of you, that you cause R. P. and R. O. to be sworn well and faithfully to execute all and singular those Things belonging to the said Office, as they will answer the same to us, and likewise injoining the said R. N. and R. W. that they in no wise concern themselves in the further executing the said Office, until they shall have another Command from us; and do you certify whatsoever you shall do in the Premises, to our Justices assigned to keep our Peace in the said County, at the next General Sessions of the Peace to be held at Lewes in the said County, then and there remitting this our Precept. Witness R. B. one of our Justices aforesaid, the first Day of June in the Eighth Year of our Reign.*

This Warrant above-written, made by the Justice in the King's Name, and the Name of the Sheriff, is now refused, and the Justice may make the Warrant in his own Name, as followeth, *viz.*

A War-

A Warrant to remove a Constable, continuing in his Office above a Year.

To R. N. of H. Yeoman.

13 & 14 Car. 2.
c. 12.
Two Justices.

Suffex, to **W** Hereas it appeareth to us, B. R. and W. N. wit, two of his Majesty's Justices of the Peace for the County aforesaid, That R. N. hath lately executed the Office of a Headborough, in and for the Parish of H. aforesaid during the Space of one whole Year, and doth still continue to execute the said Office after the Expiration of the said Year, contrary to the Form of the Statute in that Case made and provided: Now we do hereby, according to the Power and Authority given unto us, concerning the Premises, discharge you the said R. N. from the Office of Constable in and for the said Parish of H. requiring you from henceforth to forbear the Execution thereof in any Matter or Thing whatsoever, until further Order shall be taken therein. Given under our Hands and Seals, &c.

A Warrant for a new Constable to appear and be sworn.

To W. V. of H. Yeoman.

13 & 14 Car. 2.
c. 12.
Two Justices.

If the Constable die, or remove into another Parish, then say.

Suffex, to **W** Hereas R. N. hath lately been discharged by us R. B. and W. N. two of his Majesty's Justices, &c. for that he continued to execute the Office of a Constable for the Parish of H. aforesaid, above the Space of one whole Year: Or, Whereas R. N. late Constable of the Parish of H. is departed this Life, (or) is removed with himself and Family out of the Parish of H. within the Year in which he should have served in the Office of Constable; (or) is, by reason of his Age and Inability, not capable to execute, &c. the said Office: These are therefore to require you, and in his Majesty's Name to charge and command you, personally to come before us, or before some other of his Majesty's Justices of the Peace for the said County, to take the Oath of a Constable, to serve his Majesty within the Town or Parish of H. And hereof fail not. Given under our Hands and Seals, &c.

By the Statute of 3 Jac. 1. cap. 10. An Offender who is to be carried to Gaol must bear his own Charges, and of those who convey him; if he refuse, then the Constable, by Warrant from one Justice, may sell his Goods, &c.

A War-

A Warrant to levy upon the Offender's Goods, the Charges of carrying him to Gaol.

To the Constable of the Parish of *H.* in the County of *Suffex.*

Suffex, to **W** Hereas it appeareth to me, upon the Complaint ^{3 Jac. 1. c. 10.} of the Parishioners of *H.* in the County afore-^{One Justice.} said, that the Charges of *J. O.* and of those who conveyed him to Gaol, being sent thither by my Warrant upon Suspicion of Felony, did amount to 15 s. and that the said *J. O.* hath Goods and Chattels within your Township sufficient to defray the said Expence: These are therefore in his Majesty's Name, to command you to levy the said Sum of 15 s. by Distress and Sale of the Goods of the said *J. O.* within your Parish, causing the same before the Sale thereof, to be appraised by some of the Neighbours there, and that you pay the said Sum unto the Parishioners of *L** in your said County. And here-
of fail not, &c.

* Viz where he was taken.

If the Offender hath no Goods, &c. then the Constable and Church-wardens, and three of the Inhabitants, and if there are no such Officers, then four of the principal Inhabitants may tax all the rest; which Tax must be allowed by one Justice: And if they refuse, then by a Warrant from one Justice the Officer may levy it.

The Form of the Rate or Tax.

A Rate or Tax made by us whose Names are hereunto subscribed, the 30th Day of June 1724, being the Constable, Church-wardens, and three other Inhabitants of the Parish of *L.* in the County of *S.* where *J. O.* was lately taken and conveyed to the Common Gaol of the said County upon Suspicion of Felony; which said Tax is made by us, and charged upon the Inhabitants of the said Parish, to defray the Charges for carrying the said *J. O.* to Gaol, he having no Goods to satisfy the same.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Imprimis, A. B. ———	0	1	3
C. D. ———	0	0	9
E. F. ———	0	2	3
G. H. ———	0	1	3

Vol. I.

R

I. R. B.

Constable.

I R. B. Esq; one of his Majesty's Justices of the Peace of the County of Suffex, do allow the Tax above-written. Witness my Hand, this 30th Day of June 1724.

R. B. } R. W. Constable.
A. B. } Church-wardens.
C. D. }
E. F. }
G. H. } Inhabitants of H.
J. K. }

If they refuse to pay the several Sums at which they are taxed, then levy it by this Warrant, &c.

A Warrant to levy the Tax upon those who refuse to pay, &c.

To the Constable, Tithing-man, &c. of the Parish of H. in the County of Suffex, &c.

1 Jac. 1. c. 10. Suffex, to One Justice. **W** Hereas the Persons, whose Names are under-written, have been lawfully taxed in the several Sums herein mentioned, and which are added to their respective Names, in order to satisfy the Charge expended by A. B. and those whom he called to his Assistance to carry J. O. to Gaol; which said Persons have refused to pay the same, contrary to the Form of the Statute in that Case made and provided: These are therefore to require you, or either of you, to levy the said Sums upon the several Goods and Chattels of the respective Persons so taxed as aforesaid, and refusing to pay the same, returning the Overplus to them respectively. Given under our Hands and Seals, &c.

	l.	s.	d.
A. B. ———	0	1	3
C. D. ———	0	0	9
E. F. ———	0	2	3
G. H. ———	0	1	3, &c.

13 & 14 Car. 2. c. 12. By this Statute, the Constables and other Inhabitants of the Parish may tax all Persons chargeable by the 42 Eliz. c. 2. to reimburse their Charges for conveying Vagabonds &c. to the House of Correction, and for other Parish Charges.

Now the Persons to be taxed by the Act are, every Inhabitant of the Parish, the Parson or the Vicar, and every Occupier of Houses, Lands, Tithes and Woods; but the Landlord is not to be taxed, in respect of his Rent.

The Tax upon Land is to be made according to the yearly Rent, but no Man is to be taxed for the Stock he hath upon the Lands; but if a Clothier or Merchant, having a considerable

derable Stock in Trade or Merchandize, and occupy Lands, they may be taxed for both.

The Taxation of Personal Estates must be in the Parish to which it is taxed, and after the Rate of 5/ for every Hundred.

This Tax or Rate must be confirmed under the Hands and Seals of two Justices of the Peace; and then if the Persons taxed refuse to pay, the Constable, by Warrant from the Justices, may levy it.

First, If the Inhabitants refuse to make a Tax, two Justices may make a Warrant, requiring them to do it. The Form of which Warrant may be thus:

A Warrant, enabling the Parishioners to make a Tax to re-imburse the Constable.

To A. B. D. E. G. H. K. L. and other the Inhabitants of the Parish of H. in the County of Suffex.

Suffex, to **W** Hereas we are informed by W. W. Constable of your said Parish, That he hath expended several Sums of Money in the necessary Execution of his Office, and that he hath not been re-imburfed the same, but hath desired our Direction and Assistance for that Purpose: These are therefore in his Majesty's Name to require and command you, or the greater Number of you, who shall be met together upon Notice of this Precept, to examine the Accounts of the said Constable relating to the Premises; and that if you shall find his said Expences to be necessary in the Execution of his said Office, that then you forthwith do tax every Inhabitant within your Parish, in several and proportionable Sums, amounting to so much as will re-imburse him. And we do likewise hereby give Authority to the said Constable to demand and collect the respective Sums so assessed; and that if any Person so taxed shall refuse to pay the same, that then the said Constable do return unto us, or to some other Justice of this County, the Names of the Persons refusing. Given under our Hands, &c. Two Justices.

The Names of the Persons refusing to pay the Tax being returned by the Constable to the Justices of the Peace, then they may issue forth this Warrant, to appear, and shew Cause why they refuse to pay, &c.

To the Constable, Tithingman, and other Officers of the Parish of *H.* in the County of *Sussex*, &c.

Sussex, to **T** Hese are in his Majesty's Name to command wit, you, That you, or some or one of you, do give Notice unto *A. B. R. W. H. C. &c.* to appear before us at the House of *J. T. Innholder*, called or known by the Sign of the Star, in *L.* in the said County, on Monday the second Day of this Instant June, at ten of the Clock in the Morning of the same Day, to shew Cause why they severally refuse to pay the respective Sums of Money assesse'd upon them, for and towards the Re-imbursment of the Charges which *W. W.* Constable of the Parish of *H.* aforesaid, hath sustained in the necessary Execution of his said Office. And hereof fail not. Given under our Hands and Seals, &c.

If they appear, then two Justices may bind them over to appear at the Sessions, if they think fit so to do: The Recognizance is as followeth, in Parchment.

Sussex, to **B** E it remembred, that on the second Day of May wit, in the ninth Year, &c. *A. B.* of *P.* in the County aforesaid, Yeoman, and *C. D.* of, &c. came before *R. B.* and *W. N. Esqrs*; Justices of the said Lord the King assigned to keep the Peace in the said County, and acknowledged themselves severally to owe to the said Lord the King *5l.* of good and lawful Money of this Realm to be made and levied of their Goods and Chattels, Lands and Tenements to the Use of the said Lord the King, if they shall be respectively deficient in the Condition within written.

T HE Condition of this Recognizance is such, That whereas the above bounden *A. B.* and *D. E.* have severally refused to pay to *W. W.* late Constable of the Parish of *H.* in the County aforesaid, such Sums which have been severally and respectively assessed upon them, in order to re-imburse the said Constable, what hath been necessarily expended by him in the Execution of the said Office. If therefore the said *A. B.* and *D. E.* shall personally appear at the next General Quarter-Sessions of the Peace to be held for the said County at *L.* in the County aforesaid, and shall then do and receive what shall be enjoined by the said Court relating

Sussex, to
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relating to the Premises; then this Recognizance shall be void, or else to stand in full Force and Virtue.

Taken and acknowledged the second Day of May in the Year above-mentioned, before us,

R. B. W. N.

When they appear at the Sessions, they may be presented and indicted there, setting forth, That the Assessment was reasonable; and it must appear to be for a Constable's Rate, and conclude, *Contra formam Statuti* (contrary to the Form of the Statute).

If they refuse to appear upon Notice, then the Justices may issue forth this Warrant:

To the Constable and Tithing-man of, &c.

Suffex, to **W** Hereas we are informed, That A. B. and wit, D. E. of your Parish, Yeomen, had Notice given unto them respectively to appear before us, at a certain Time and Place mentioned in a former Warrant for that Purpose, to shew Cause why they did not pay unto W. W. late Constable of the Parish of H. aforesaid, the respective Sums assessed upon them, towards the Re-imbursement of his necessary Charges in the Execution of the said Office: And whereas they have refused or neglected to appear according to the Purport of the said Warrant, or to pay the said Money: These are therefore in his Majesty's Name to command you to bring the aforesaid A. B. and D. E. before us or some other Justice of the Peace for this County, at the House of J. T. in L. upon Tuesday next, by Ten of the Clock in the Forenoon of the same Day, to answer the Premises. Given under our Hands and Seals, &c.

If they appear before the Justices, and they do not think it expedient to bind them over to the Sessions, then they may grant a Warrant to distrain, &c. for the Charges, as followeth:

To the Constable and Tithing-man of the Parish of H. in the County of Suffex.

Suffex, to **W** Hereas it appeareth unto us, upon the Complaint of J. D. late Constable of the said Parish, That A. B. and D. E. Inhabitants of the aforesaid Parish, have refused to pay the Sums herein after written, That is to say, the said A. B. hath refused to pay 2 s. and the said D. E. 2 s. 6 d. being severally assessed upon them towards

the Re-imbursing such Charges which the said J. O. hath necessarily expended in the Execution of his said Office: These are therefore to require you to levy the said respective Sums so assessed upon the said Persons, by Distress and Sale of their respective Goods, rendering to them the Overplus, if any shall be. Given under our Hands and Seals, &c.

If the Constable doth not cause Rogues and Vagabonds to be whipped, then the Justice may send a Warrant to levy the Penalty of 10s. for every Default.

To the High Constable of the Rape of L. or to his Deputy.

20 Eliz. c. 4.
Two Justices.
Vide Vagrants
and the late
Acts.
If begging,
then the Con-
stable forfeits
30 s. nor p-
nishing him.
7 Jac. c. 4.

Suffex, to **W** Hereas A. B. a Vagabond, was lately seen
writ, wandring in the Parish of H. in the said
County, and J. O. being then Constable of the said Parish,
having Notice thereof, did neglect to call to him the Assistance
of the Minister, and one other Inhabitant thereof, to appoint
the said A. B. to be stripped and openly whipped, pursuant to
the Statute in that Case made and provided; for which Default
he hath forfeited the Sum of Ten Shillings: These are therefore
in his Majesty's Name to require you, upon Receipt hereof to de-
mand the said Ten Shillings of the said J. O. and if he refuse
to pay the same, that then you forthwith levy it by Distress
and Sale of his Goods and Chattels, returning to him the Over-
plus; and for your so doing this shall be your Warrant. Given
under our Hands and Seals, &c.

The Confession of the Party, or Proof by Two Witnesses before Two Justices, is a Conviction. The Ten Shilling must go to the Poor of the Parish, or to the Maintenance of the House of Correction, as the Justice of the Peace shall think fit.

A Warrant to make a privy Search.

To the Constable and Tithing-man of the Parish of H. &c.

7 Jac. c. 4.

Suffex, to **T** Hese are to authorize and require you to call
writ, to your Assistance some sufficient Men of your
Neighbourhood, and that in one Night, before the 10th Day of
this Instant May, you make a privy Search in all suspicious
Places within your Precinct, to find out and apprehend Rogues
Vagabonds, and other suspicious Persons there; and that you
cause such as you shall so find, to be brought before us R. O.
and W. N. two of his Majesty's Justices of the Peace for the
said County, at the House of J. O. in L. in the County aforesaid,
on Thursday the 10th of May aforesaid, to be examined

Suffex, to
writ,
H. in the
and Distur-
other Offe-
reign Lord
the said C-
aforesaid,
was presen-

and punished as we shall see Cause, and that you appear there likewise to give an Account touching the Premisses. Given under our Hands and Seals the 5th Day of May, &c.

R. B. W. N.

The Justices must meet twice a Year to execute this Statute, and the Warrant above-written must be sent to the Constable five Days before their Meeting; and if the Constable shall not appear at that Meeting, or not give an Account upon Oath (when he doth appear) what Rogues he hath taken; or if he doth not convey to the House of Correction such of them as the Justices of Peace shall commit, he may be fined any Sum under 40 s. and a Warrant as followeth:

To the High Constable of the Rape of L. in the County of
Suffex.

Suffex, to **W** Hereas at our Meeting at L. on the 10th Day 7 Jac. c. 4.
wit, of May last, for the better Execution of the Two Justices.
Statutes concerning the Punishment of Rogues and Vagabonds,
and other disorderly Persons, made in the Reign of the late King
James the First, J. O. the Constable of the Parish of H. was
fined in the Sum of 20 s. for not * appearing at the said Meet- * Or for any
ing before us, pursuant to a former Warrant to him directed of the Causes
for that Purpose: These are therefore in his Majesty's Name above-men-
tioned.
to require you forthwith, upon Receipt hereof, to demand of the
said J. O. the aforesaid Fine; and if he shall refuse to pay the
same, that then you levy the said Sum of 20s. by Distress and
Sale of his Goods and Chattels, rendring to him the Overplus;
and for your so doing this shall be your Warrant. Given, &c.

R. B. W. N.

An Indictment against a Constable, being
present at an Affray, and refusing to
keep the Peace.

Suffex, to **T** HE Jurors, &c. That on the third Day of Fine and Im-
wit, May in the fifth Year of the Reign, &c. at prisonment.
H. in the said County of Suffex there was a great Affray,
and Disturbance of the Peace made by J. O. T. B. and many
other Offenders, and Disturbers of the Peace of our said Sove-
reign Lord the now King, and that T. B. of H. aforesaid in
the said County, Yeoman, then Constable of the Town of H.
aforesaid, on the Day, Year, and at the Place above-mentioned
was present at the Affray aforesaid, (or had Notice, as the
R 4 Case

*Case requires), and did not endeavour to appease the said Af-
fray, and to keep the Peace of our said Sovereign Lord the
King, nor to arrest the said J. O. T. B. and the other Di-
sturbers of the Peace, but did intirely neglect the due Execution
of his said Office in this Particular, to the great Contempt of our
said Sovereign Lord the King, and against the Peace of our said
Lord the King, his Crown and Dignity.*

An Indictment against a Constable for not apprehending of a Felon,

Suffex, to **T**HE Jurors, &c. That J. S. of H. in the
County aforesaid, Labourer, on the first Day
of May in the fifth Year of the Reign, &c. at H. aforesaid in
the said County did feloniously take and lead away one Cow of
the Goods and Chattels of one G. E. And also whereas the said
G. E. on the third Day of May in the fifth Year above-men-
tioned at Lewes in the said County did give Notice to J. O. of
H. aforesaid, Yeoman, then Constable of the Town of H. aforesaid,
that the said J. S. had done and committed the said Fe-
lony in Manner and Form aforesaid, and that the said J. S.
was then in the said Town of H. and the said G. E. did then
and there require the said Constable to arrest the said J. S. for
the Felony aforesaid, yet the said J. O. being then Constable of
the said Town of H. on the same Day and Year last above-
mentioned at H. aforesaid did refuse and neglect to arrest the
said J. S. for the Felony aforesaid in Contempt of our said So-
vereign Lord the King, and contrary to the Duty of his Office
aforesaid, and against the Peace of our said Sovereign Lord
the now King, his Crown and Dignity.

Fine and Im-
prisonment.

The like Indictment may be against a Constable for re-
fusing to search for stolen Goods.

An Indictment against a Constable for re- fusing to execute the Justice's Warrant.

Suffex, to **T**HE Jurors, &c. That whereas R. B. Esq;
One of the Justices of our Sovereign Lord the
now King assigned to keep the Peace in the County of Suffex, by
his Warrant signed and sealed with his proper Hand and Seal,
dated the first Day of July in the first Year of the Reign, &c.
directed to all and singular Constables, and other Officers of our
said Sovereign Lord the King in the said County of Suffex, com-
manded the said Constables and Officers, and each of them, that
they

they or one of them should take J. O. (* here recite the Warrant, which if it be to find Sureties, &c.) to find sufficient Surety for the Peace to be kept towards our said Sovereign Lord the King, and all his People, and especially towards R. N. which said Warrant was afterwards, that is to say (on such a Day and Year) at H. in the said County delivered to J. O. then Constable of H. aforesaid in Form of Law to be executed, yet the said J. O. little regarding his Duty in this particular, from the said first Day of July in the Year above-mentioned, until the Day of the taking of this Inquisition at the Parish aforesaid in the said County, hath remissly and negligently behaved himself in the Execution of his Office about the Premises, and hath entirely neglected and disdainfully refused the Execution of the said Warrant for the whole Time aforesaid, contrary to the Duty of his Office in this Particular, in Contempt of our said Sovereign Lord the now King, and his Laws, to the great De-
 lay of Justice, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

* The Nature and Tenor of the Warrant must be set forth, for if the Tenor of the Warrant is not set forth, the Indictment will be quashed. 1 Vent. 305.

Fine and Imprisonment.

An Indictment against a Constable for not raising Hue and Cry.

Sussex, to **T**HE Jurors, &c. That (on such a Day and Year) at H. in the said County of Sussex, certain Offenders unknown with Force and Arms did make an Assault upon one R. N. Yeoman, and feloniously did take and carry away Five Pounds in ready Money, being the proper Money of him the said R. N. there found; whereupon the said R. N. immediately on the same Day and Year above-mentioned did come to the Town of B. in the said County, and then and there did give Notice to one J. O. then being Constable of the said Town of B. that the said Offenders had committed the Felony aforesaid in the Manner and Form aforesaid, and then and there required the said J. O. to levy fresh Hue and Cry against the said Offenders, and to command the Inhabitants of the said Town of B. to pursue such Hue and Cry, as they ought to do by Right, and by the Law of the Land; nevertheless the said J. O. in no wise regarding the due Execution of his Office aforesaid in this Particular, did not levy such Hue and Cry, nor command the said Inhabitants, or any of them, forthwith to pursue such Hue and Cry, but did then and there absolutely neglect and refuse so to do, to the bad Example of other Subjects of our Sovereign Lord the King, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and also contrary to the Form of the Statute in such Case made and provided.

Fine and Imprisonment.

An

Indictments against Constables.

An Indictment against those who refuse
to follow the Hue and Cry, being com-
manded by the Constable.

Suffex, to **T**HE Jurors, &c. (as in the former Prece-
dit, dent to the Words) *against the said Offenders, and hereupon the said J. O. on the same Day and Year above-mentioned, at B. aforesaid, did raise Hue and Cry against the said Offenders, as by Right he ought, and then and there commanded and appointed T. P. of B. aforesaid, Yeoman, and G. F. of the same Place, Husbandman, to pursue the said Hue and Cry; nevertheless the said T. P. and G. F. at B. aforesaid in the said County, on the Day and Year above-mentioned, did entirely neglect and refuse to pursue the said Hue and Cry in Contempt of our said Sovereign Lord the King, and against the Peace, &c.*

An Indictment against a Constable for an
Escape.

Suffex, to **T**HE Jurors, &c. *That whereas one J. O. late of H. in the County aforesaid, Husbandman, was taken and arrested for Stealing an Horse from one R. B. and afterwards, to wit, on the thirtieth Day of April in the third Year of the Reign, &c. at H. aforesaid, was committed (by H. P. Esq; one of the Justices of our Sovereign Lord the King, assigned to keep the Peace in the said County,) into the Custody of R. N. then Constable of the Town of H. aforesaid, to be carried to the Gaol for the said County, and that the said R. N. then and there had the said J. O. in his Custody for the Felony aforesaid, and afterwards, that is to say, on the said thirtieth Day of April in the third Year above-mentioned, at H. aforesaid in the said County, he the said R. N. did voluntarily and feloniously suffer the said J. O. to go at large from the Custody of him the said R. N. against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.*

An Indiētment against those who refuse to assist the Constable to apprehend a Felon.

Suffex, to **T**HE Jurors, &c. That J. S. of H. in the County aforesaid, Labourer, on the first Day of May in the fifth Year of the Reign, &c. at H. aforesaid in the said County, did feloniously take and lead away one Cow of the Goods and Chattels of one G. E. And also whereas J. O. the Constable of the Town of H. aforesaid (one such a Day and Year) at H. aforesaid, commanded and required T. P. of H. aforesaid, Yeoman, and G. B. of the same Place, Yeoman, to aid him the said J. O. then being Constable of H. aforesaid, to take and arrest the said J. S. for the said Felony; nevertheless the said T. P. and G. B. on the Day and Year above-mentioned at H. aforesaid have entirely refused, and each of them hath refused so to do, in Contempt of our Sovereign Lord the now King, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Fine and Imprisonment.

The like may be for refusing to assist a Constable to convey Prisoners to the Gaol, or to bring them before a Justice of the Peace, &c.

An Indiētment against a Constable for Negligence in his Office.

Suffex, to **T**HE Jurors, &c. That R. K. of H. in the said County, Yeoman, on the thirtieth Day of April in the fifth Year of the Reign, &c. then being Constable of the Town of H. in the County aforesaid, at H. aforesaid in the said County, hath negligently behaved himself in the Business of our said Sovereign Lord the King, belonging to his Office, and hath neglected to execute divers Precepts and Warrants directed to him by the Justices of our said Sovereign Lord the King, assigned to keep the Peace in the said County, and also to hear and determine divers Felonies, Trespasses, and other Misdeeds committed in the said County, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Quere of this Precedent, for it seems too general, so that the Defendant can't tell what Defence to make.

Corr. See Transportation.

Coroner.

Coroner.

Who ought to be a Coroner, and who not.

BY the Statute of *W. 1. c. 10.* they were to be Knights; that is, they were to be Freeholders, and Men of Estates, sufficient to qualify them for this Office; for being chosen by the Freeholders of the County, 'tis they must answer the Fines, and other Duties imposed on the Coroners in Matters relating to their Office, if they are not of Ability to do it themselves. But 'tis not requisite he should be a Knight if he hath sufficient Lands. *F. N. B. 164.*

Godh. 105.
F. N. B. 163.

And therefore, if he hath not sufficient Lands within the Hundred, a Writ may issue to chuse another; for in such Case he ceases to be a Coroner, and need not to be discharged formally by a Writ.

They must be Men who *melius sciunt, ac possunt Officio intendere* (who are sufficiently knowing in, and able to attend, the Office); and therefore a blind, deaf, lame or sick Man, or who is *perpetuo languidus* (always sick), is not fit for this Office, and may be removed if chosen.

How chosen, and how many in a County.

By Virtue of a Writ *de Coronatore eligendo*, directed to the Sheriff, he is to be chosen by the Freeholders of the County, and the Sheriff after the Day of Election is to certify it, and the Name of the Person chosen, &c. *F. N. B. 163. 28 Ed. 3. c. 6.*

He is likewise to administer the Oath of his Office to him; as to the Number 'tis uncertain, but in most Counties there are generally four Coroners.

And because he is elected by the Freeholders, his Office is not determined by the Demise of the King. *1 Lev. 120. Tombes and Etbrington. Vide de Officio Coronatoris, 4 Ed. 1. St. 2. §. 1, 2.*

His Office in relation to the Dead, and the Witnesses.

He is to inquire *super visum Corporis* (upon Sight of the Body), how the Person was killed, and by whom, and what Goods and Chattels he had at the Time of the Fact committed.

* 2 Lev. 141.
King and Parker.
'Tis traversable.

If the Body cannot be found, then he has no Authority; but in such Cases the Matter may be * presented to the Justices in their Quarter-Sessions, and there found by the Jury; and this will intitle the King to a Forfeiture of the Goods. *1 Roll. Rep. 217. Noy 87. Popb. 209.*

He must take the Depositions of Witnesses in Writing, attested under their Hands, and may bind them over to the next Gaol Delivery to give Evidence, &c.

If the Jury impanelled by him is sworn, and the Witnesses not ready, he may then adjourn them, and bind them by Recognizance to appear again.

When he hath Notice given to view the Body, he must make a Precept directed to the Constable where it lieth, to summon Twenty-four Men (who are to be of the Jury) to appear

pear before him at a certain Day and Place, to execute such Things as shall be given to them in Charge.

If the Body is buried before he comes, the Vill must be amerced, and he may dig it up again; the Vill may be also amerced for neglecting to send for him, so that the Body is putrified to the Annoyance of the People.

He who buries a dead Body, dying of a violent Death, before the Coroner's Inquest have sat upon it, is *indictable*; this was the Opinion of *Holt*, Chief Justice.

'Tis true, he may cause the dead Body to be digged up again *soon after 'tis buried*; but not at a great Distance of Time; tho' it was so done in one *Barkley's Case*, but not without Leave of the Court. *Sid. 101.*

He may find any Nufance which occasioned the Death of a Man; as, that a Bridge is in Decay, and by Reason of a Breach, the Person fell in and was drowned, and the Town shall be amerced. *Aleyn 52.*

He is a judicial Officer, and therefore cannot make a Deputy; besides, by the Statute called * *Officium Coronatoris*, * 4 Ed. 1. c. 20 he is enjoined *Statim accedere ad occisos* (immediately to go to the Slain), which implies, that he ought to see the dead Body; and an Inquisition otherwise taken is void. *Staud. Pl. Coron. 51.*

He being an Officer at the Common Law for the Administration of Justice, was to have no Fee for executing his Office; but by the Statute of 3 H. 7. he is impowered, upon View of the Body, to take 13 s. 4 d. of the Goods of the Slayer; if he has none, and is fled, then he may amerce the Town for suffering the Criminal to escape, and take that Fee out of the Amercement; but he cannot demand any Fee upon the View of a Person killed by Misfortune. 2 *Inst. 176.*

His Fees.
By 1 Hen. 8 c. 7. s. 1. he is to take no Fee for any Person slain, drown'd or otherwise dead by Misadventure, upon Pain of 40 s.

Justices of Peace have Power to inquire of it by Examination or Presentment.

If he doth not come, having Notice of the Death of any Person, he may be fined and imprisoned by the Justices. How to be punished.

For not binding over Witnesses to the next Gaol-delivery; for not certifying his Recognizances, and the Evidence and Inquisition taken before him, the Justices may fine him.

He is to take an Inquisition upon Flight of the Felon, to intitle the King to a Forfeiture. 5 *Rep. 109. b. Foxley's Case.* Inquisition, and Matters relating to it.

But this must be within his proper Jurisdiction in the County; for if any Body be killed within the Verge of the King's Household, the Coroner there hath an exempt Power. Wrote and Wiggles.

4 *Rep. 45.*

If there is any Practice with him to suppress the Evidence for the King, B. R. may set aside the Inquisition upon his Misbehaviour; and if he omit, or neglect to inquire, B. R. as supreme Coroner may do it, or appoint Commissioners; but

1 Vent. 132.

but then it must be *super visum Corporis* (upon Sight of the Body), if done by Commissioners.

He ought to deliver the Inquisition at the next Gaol-delivery, or to certify to *B. R.* where the Chief Justice is the supreme Coroner; if he refuseth, he may be discharged of his Office, and fined by the Justices.

And therefore, where a Coroner did not return his Inquisition, it being found Murder, and the same Person being indicted at the next Gaol-delivery, and the Jury found the Bill for Manslaughter, the Party came in and confessed the Indictment, and was bailed, and afterwards pleaded his Pardon, which was allowed; yet the Court made him plead to an Indictment upon the Coroner's Inquest, which he did, *viz. Aulerfoits Convict*; and for this Neglect the Coroner was fined.

1 Salk. 700.
King and Bun-
ney.

Where a Coroner's Inquisition was quashed, he must make a new one *super visum Corporis*; but if he misbehaves himself, and a *Melius inquirendum* is granted, the Inquisition must be taken by the Sheriff, or Commissioners upon *Affidavits*; because none but a Coroner can take Inquisition *super visum Corporis*; and he is not to be trusted again.

An Inquisition was taken *super visum Corporis*, That C. having not the Fear of God, &c. *voluntarie, Felonice & ut Felo de se cum cultro prelii, &c. quem in manu sua dextra tenuit jagulum suum secuit & seipsum occidit* (voluntarily, feloniously, and as a Slayer of himself, with a Knife of the Price of, &c. which he held in his Right Hand, he hath cut his Throat and killed himself,) it was objected, that it should have been *Murdravit*; 'tis true the Word is necessary in an Indictment for Murder, because there are Degrees in killing another, as *Murder, Manslaughter*; but there are none in killing one's self; besides that Word is necessary in an Indictment; because Clergy is excluded; but 'tis not necessary in an Inquisition. However this was quashed, because the *Wound was not described*, and it was not alledged that it was *mortal*, and 'tis not said that he *died of the Wound*; the Body after it had been buried was taken up again; adjudged a Misdemeanor in the Coroner.

Aleyn 51.

He may find any *Nusance* which occasion'd the Death, &c. As if one riding over a Bridge, fell into the River and was drowned; the Bridge being broken, or out of Repair, the Coroner may find it; and in such Case the Town shall be amerced; but it must likewise be found, that the Town is bound to repair it.

The Vill shall be amerced if the Coroner doth not take an Inquisition *super visum Corporis*, because it shall be intended they did not give him Notice.

An Information was brought by the Master of the Crown-Office against the Debtor of a *Felo de se*, the Money being

by that Means forfeited to the King; if the Substance of the Inquisition be not set forth in the Information, 'tis void.

2 Saund. 27.

A *Melius inquirend'* is never granted after an Inquisition *super visum Corporis* is filed, unless it is quashed upon Oath made of a Misdemeanor in the Coroner or Jury; as that they did not go according to their Evidence.

Melius inquirend'.

2 Keb. 859.

1 Mod. 82.

3 Mod. 80, 238.

King and Hetherfal.

King and Bunney.

And in some Cases it may go to the Sheriff; as if the Coroner *super visum Corporis* find, that the Man *fortuito* fell into a Pit, &c. yet there may go a *Melius inquirend'* to the Sheriff, to inquire of the Death, &c. and what Goods and Chattels he had at that Time.

By the Statute of 4 Ed. 1. the Inquisition should be taken *super sacram'*, &c. *hominum Villarum prox' adiacen'* (upon the Oaths, &c. of the Men of the Village next adjoining); but it was *super sacram'*, &c. *proborum & legalium hominum de Parochia*, &c. (upon the Oaths, &c. of good and lawful Men of the Parish of, &c.) yet it was held good. *Sid.* 204. *Latch* 166.

1 Vent. 182.

Cro. Eliz. 371.

Matters of Form may be amended, as *seipsum felonice submersus fuit* (he feloniously drowned himself); it should be *jecit seipsum in aquam*, & *ibidem seipsum mersit* (that he threw himself into the Water, and there drowned himself). *Sid.* 259.

If he return *fugam fecit* (that he fled), 'tis not traversable; but if he find the Person *Felo de se* (that he killed himself), it may be traversed. 2 Lev. 152. 1 Vent. 178, 352.

Returning of a Process.

2 Lev. 141.

King and Parker.

He is a Ministerial as well as a Judicial Officer; and therefore where an Exception is to the Sheriff, *viz.* That he is of Kin, or Tenant to the Party, or where 'tis at his Suit, or if any Default is in him by Partiality, or otherwise, in making the Panel; in either of these or like Cases, the Coroner shall return the Process.

But then if the Original Process is directed to him, all other Process in the same Suit must be so likewise, though another and more indifferent Sheriff be appointed whilst that Suit is depending.

And if such Process is directed *Coronatoribus*, it hath been held, Two may return it, though there are more in the County, but one cannot; for in this Case they are but as one Officer; and therefore if one arrest a Debtor, and he escapes, the Action shall be brought against both. 3 Lev. 399. *Taylor* against *Clerk and Denny*. No Judgment, the Court doubting.

An Indictment against a Coroner upon the
1 Hen. 8. c. 7. for Extortion.

THE Jurors for our Sovereign Lord the King upon their Oath present, That whereas by a Statute in the Parliament of our Sovereign Lord Henry the Eighth, late King of England, in the first Year of his Reign, it is ordained and established, That upon a Request made to a Coroner to come and inquire upon the View of any Person slain, drowned, or otherwise dead by Misadventure, the said Coroner diligently should do his Office upon View of the Body of every such Person or Persons, without taking any Thing therefore, upon Pain to every Coroner that would not endeavour himself to do his Office, as afore is said, or that should take any Thing for doing his Office upon any Person dead by Misadventure, for every Time forty Shillings, as in that Statute is fully contained. Nevertheless on W. B. of H. in the said County, Gent. on the twelfth Day of December in the ninth Year of the Reign, &c. then being one of the Coroners of our said Sovereign Lord the King in the County of E. aforesaid, at M. in the said County of E. did, by Colour of his said Office, injuriously and by Extortion take for his Fee twenty Shillings of one R. S. of B. in the said County, Yeoman, for executing his said Office upon View of the Body of one J. C. late of B. in the said County of E. Labourer, who was slain by Misadventure on the fourth Day of October in the ninth Year, &c. at B. aforesaid in the said County of E. to the great Contempt of our said Sovereign Lord the King, to the great Damage of him the said R. S. and against the Form of the Statute aforesaid, and divers other Statutes in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

An Inquisition for Murder upon View of
the Body.

Sussex, to **A**N Inquisition indented, taken at L. in the said County, before me M. V. one of the Coroners of our Sovereign Lord the King for the County aforesaid, on Friday the thirtieth Day of April in the eighth Year, &c. upon View of the Body of T. R. (then and there lying dead) being feloniously murdered at L. aforesaid, upon the Oath of honest and lawful Men of the Town of L. aforesaid, and Three other of the next Towns, that is to say, Barcomb, Ringmere, and Malling, as is the Custom, to inquire after what Manner, and by what Means the said T. R. came to his Death, upon the

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Oaths of * (the Jury) who say upon their Oath, that the said * Naming the
T. R. on the Day, Year, and Place above-mentioned, about Jury.
one of the Clock in the Afternoon on the said Friday, was in the
Peace of God and our said Sovereign Lord the now King, at
L. aforesaid, and then and there came W. S. late of L. aforesaid,
Gent. and feloniously and as a Felon of our said Lord the
now King, and of his Malice forethought, on the Day, Year,
Hour, and Place above-mentioned, did make an Assault upon
the said T. R. in the said County, and did strike the said
T. R. with a certain Sword (of the Price of two Shillings,
which the said W. S. then and there held in his Right Hand)
upon the right Part of his Breast, and gave the said T. R.
one mortal Wound, of which said Wound the said T. R. immediately
died, and so the said W. S. then and there feloniously
killed and murdered the said T. R. against the Peace of our
said Lord the King, his Crown and Dignity; and the said Jurors
further say upon their Oath aforesaid, that R. S. of A.
aforesaid, and J. O. of, &c. were feloniously present with
drawn Swords, at the Time of the Felony and Murder aforesaid,
in Form aforesaid committed, that is to say, on Friday the
said thirtieth Day of April in the eighth Year, &c. at L. aforesaid
in the said County, about one of the Clock in the Afternoon
of the same Day, then and there comforting, abetting
and aiding the said W. S. to do and commit the Felony and
Murder aforesaid in Manner aforesaid, against the Peace of our
said Sovereign Lord the King, his Crown and Dignity. And
moreover the Jurors aforesaid upon their Oath say, that the
said R. S. and J. O. had not, nor had either of them any Goods
or Chattels, Lands or Tenements, to their Knowledge, within
the said County, at the Time of the Felony and Murder committed
as aforesaid. In Witness, &c.

See under Title *Felo de se*, a Precedent for killing
another in his own Defence.

Upon one who hath hanged himself.

Middlesex, **A**N Inquisition, (&c. as before to) one of the Clock
to wit, in the Afternoon of the same Day, not having
the Fear of God before his Eyes, but being moved and seduced by
the Instigation of the Devil, did tie about the Branch of an Ash-
Tree, in the Orchard of one R. B. Gent. at H. aforesaid in the
said County (then and there being alone) a certain Rope of the
Price of one Penny, which he the said W. R. then and there
held in his Hands, and did then and there by that Means voluntarily
and feloniously suffocate, strangle and hang himself with
the Rope aforesaid, and so the said Jurors upon their Oath aforesaid
say, that the said W. R. in Manner and Form aforesaid,
did voluntarily, feloniously, and as a *Felo de se* (one who
murders
VOL. I. S

murders himself) murder himself, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and that the said W. R. had no Goods or Chattels, Lands or Tenements within the said County to their Knowledge. In Witness, &c.

If it be by cutting his Throat, then say,

— *Not having the Fear of God before his Eyes, being alone in his own Mansion-house, did voluntarily, feloniously, and as a Felo de se (one who murders himself), cut his own Throat, and kill himself with a certain Knife of the Price of three Pence, which he then held in his Right Hand.*

This Inquisition was held to be faulty by Holt, Chief Justice, because 'tis not said that he died of the Wound; therefore these Words should be added to make it good:

And did then and there feloniously give himself one mortal Wound with the said Knife, of which said mortal Wound the said R. W. immediately died, and so the said R. W. did then and there feloniously, and as a Felo de se (one who murders himself), murder himself.

See after, in *felo de se*, a better Precedent.

If by Drowning, then say,

I*N a certain River (or as the Case is) there, called, &c. did voluntarily and feloniously drown himself, and so, &c.*

Upon one *Non compos mentis* (not of sound Mind.)

A*N Inquisition, &c. who say upon their Oath aforesaid, that the said R. N. on the Day and Year above-mentioned, and long before, that is to say, from the first Day of April in the fifth Year of the Reign, &c. and until the said Day being Lunatick, and not of sound Mind, Memory, and Understanding, did come alone to a certain Bridge, called, &c. and did then and there throw himself from the said Bridge into the Water, and did voluntarily and feloniously drown himself, and so, &c.*

Quære, for it can't be feloniously, for

one who is *Non compos mentis* can't be said to do any Thing. *felleo animo.*

Upon

Upon one who died in Prison.

Middlesex, **A**N Inquisition, &c. who say upon their Oath, to wit, **A** that the said W. B. who was before committed to Gaol by Sir T. P. a Baronet, upon Suspicion of a certain Felony having been committed by the said W. B. from the Visitation of God died in the said Gaol on the Day and Year above-mentioned, and so the said Jurors upon their Oath say, that the said W. B. came to his Death in Manner and Form aforesaid, and not otherwise. In Witness, &c.

Upon one who was murdered in a Robbery.

AN Inquisition, &c. who say upon their Oath, that on Friday the 30th Day of April in the sixth Year, &c. it so happened, that a certain Person unknown not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, with Force and Arms, &c. that is to say with Swords and Daggers, between Five and Six of the Clock in the Forenoon of the same Day at H. aforesaid in the said County in the King's Highway did make an Assault upon the said R. N. then and there being in the Peace of God and of our said Sovereign Lord the King, and the said Person unknown did then and there feloniously strike the said R. N. upon the Right Part of his Belly with a certain Sword of the Price of two Shillings, which he then and there held in his Hand, and did then and there give the said R. N. one mortal Wound with the Sword aforesaid of four Thumbs Depth, and one Thumb's Breadth, of which said mortal Wound the said R. N. then and there immediately died, and so the said Jurors say upon their Oath aforesaid, that the said Person unknown at H. aforesaid in the said County did feloniously kill and murder the said R. N. in Manner and Form aforesaid, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and the said Jurors upon their Oath aforesaid further say, that the said Person unknown, after he had committed the said Felony and Murder in Manner aforesaid, did fly away, against the Peace, &c.

On an Infant murdered, upon View of the Body.

Middlesex, **A**N Inquisition, &c. before me R. R. Gent. to wit, **A** one of the Coroners of our said Sovereign Lord the King in the said County, upon View of the Body of a certain Male Infant (there lying dead) born of the Body of A. B. late of H. in the County aforesaid, upon the Oath (of the Jury) who say upon their Oath aforesaid, that the said A. B. not having the Fear of God before her Eyes, but being moved and seduced by the Instigation of the Devil, on Friday, &c. in the fifth Year, &c. at H. aforesaid in the said County did make an Assault upon the Male Infant aforesaid then and there being in the Peace of God, and of our said Sovereign Lord the King, and that the said A. B. did feloniously, voluntarily, and of her Malice, Forethought, strangle and suffocate the said Infant with her Hands, of which said Strangling and Suffocation the said Infant at H. aforesaid in the said County immediately died, and so, &c.

Cottage.

What it is.
31 Eliz. c. 7.

TIS a House erected since the Statute, not having four Acres of Land in Fee-simple or in Tail laid to it, and near it, and which is usually occupied with it.

If a Cottage was built before the Statute of 31 Eliz. and afterwards converted into two Dwelling-houses without four Acres of Land, both are Cottages.

If a new House is built since the Statute upon an old Foundation before, it is a Cottage.

If the Land is sold from the House, or that from the Land, 'tis a Cottage.

No Cottage.

But if a new House be built upon an old Foundation before the Statute, 'tis no Cottage.

How it may be tolerated.

By Order of Justices at Sessions; but this must be with Leave of the Lord of the Manor; but if the Lord will not give Leave, Sessions alone may tolerate for a particular Time.

Major Part of Church-wardens and Overseers of the Poor, by Leave of the Lord in Writing under Hand and Seal, may set up a Cottage upon the Waste, at the Charge of the Parish, for poor and impotent Persons; this must be confirmed by the Sessions. 43 Eliz. c. 2.

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Not to Houses in Cities or Towns corporate, Boroughs, or Market-Towns. 31 Eliz. c. 7. §. 5.

To no Houses of Labourers in Mines, nor to Houses of Brick and Tile-Makers, and Lime-burners, so as such Houses be within a Mile of their Work. §. 5.

To no Houses within a Mile of the Sea, or on the Side of a River (where the Admiral hath Jurisdiction) if a Sailor, or he who furnishes Ships with Victuals, liveth therein. §. 6.

To no Houses in Forests, Chafes, Warrens, or Parks, so long as Keepers live therein. §. 6.

Cottage, when built, cannot be pulled down; but the Builder, or he who converts a House built to a Cottage, forfeits 10*l.* to the King.

Punishment for a Cottager, not having four Acres.

He, who upholds and maintains such a House, forfeits 40*s.* per Month. §. 2.

Whether a Cottage hath four Acres or not; whether 'tis in City or in Borough; there must be no Inmates, under Penalty of 10*s.* per Month, which the Owner or Occupier of the Cottage must pay to the Lord of the Leet. §. 3.

Inmates.

In this Matter, the Lord, &c. the Justices of Assize, and the Justices in the Sessions, have a concurrent Power to hear and determine; but the first Inquiry must stand. §. 4.

It must be presented by the Jury upon their own Knowledge, or an Indictment may be found by them; in either of these Cases the Lord hath a Title, or may distrain, as to bring an Action of Debt for the Forfeiture, or to levy it by a *Fieri facias* directed by his Steward to the Bailiff of the Manor. Co. Ent. 666.

Penalty of 10*s.* per Month, how to be recovered.

Indictments concerning Cottages.

FOR erecting of a Cottage, must conclude *contra formam Statuti* (against the Form of the Statute).

2 Rol. Rep. 33. Sid. 359.

Must likewise conclude *contra pacem* (against the Peace), or otherwise may be quash'd; if it be for erecting *unum Messuagium pro Habitatione* (one Messuage for Habitation) and not laying four Acres of Land, 'tis good, though he doth not say it is inhabited. Rol. Abr. 2 Part 80.

It was formerly held to the contrary, because the very Building was an Offence. 2 Bul. 264. But the later Authorities are otherwise; for it must be shewed that the Building was *pro Habitatione* (for Habitation), these being the very Words of the Statute which creates the Offence. 1 Vent. 107. 4 Mod. 345. seems *contra*. Erecting and continuing a Cottage good, without saying *pro Habitatione*; for if 'tis applied to any other Use than a dwelling House, the Defendant must shew it, otherwise it shall be intended to be built for his Habitation.

King and Nevil.

1 Mod. 295.

Vide St 7. 33.

Cottage.

The Sessions licensed J. O. to build a Cottage, and R. M. was indicted for refusing to perform this Order; but it was quashed, because it did not set forth, when, nor before what Justice he refused.

33 Ed. 1.
Godb. 383.

Indictment for erecting and continuing of a Cottage five Years past, and not laying four Acres of Land, according to the Statute *De terris mensurandis* (of measuring of Land), quash'd, for not saying, That *voluntarie* (voluntarily) he did continue it. *Secondly*, For not prosecuting within two Years. *Thirdly*, For alledging the Ordinance of 33 Ed. 1. to be a Statute, 2 Cro. 603. *tamen quare* (doubtful), for the very Erecting is an Offence within the Statute.

Presentment at a Leet, for erecting a Cottage contrary to the Statute 31 Eliz. not laying four Acres of Land to it, according to the Statute *De terris mensurandis* (of Measuring of Land) in H. 13 W. this was adjudg'd a Cottage; and though the Caption of this Presentment was *ad Cur. visus plegii cum Cur' Baron.* (at the View of Frank-pledge with the Court-Baron,) it was held well, for here it would not be incertain, which Court took the Presentment, because the *Court-Baron* had no Authority to take it; therefore it could not be by that Court.

The Indictment was *Per juratores presentatum existit* (being presented by the Jury), That the Defendant had erected a Cottage; & *ulterius presentant quod continuavit, &c. contra formam Statuti* (and they further present that he hath continued, &c. against the Form of the Statute): After a Verdict, it was reversed by Writ of Error, because there was no Nominative Case to agree with the Verb *Presentant*; for the *Continuing* the Cottage is a new Indictment, distinct from the first; and therefore *Juratores* in that Case shall not relate to this. Mich. 6 W. & M. 4 Mod. 345. King and Trobridge.

The Lord's Consent for erecting a Cottage.

UPON the Petition of A. B. and the Certificate of the Inhabitants of the Parish of, &c. I W. B. Lord of the Manor of, &c. do hereby give my Consent, that the said A. B. shall and may erect a Cottage for his Habitation, at such a Place within the said Manor, as my Steward shall assign, provided an Order of Sessions be procured according to Law for Confirmation thereof. Witness my Hand, &c.

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A Petition to the Justices thereupon.

To the Worshipful the Justices of the Peace, at the General Quarter-Session of the Peace holden at, &c. in the County of, &c. on, &c.

THE Humble Petition of A. B. Labourer, sheweth, That your Petitioner with his Wife and Children, being settled as an Inhabitant in the Parish of, &c. and at present destitute of an Habitation, hath by Address made to W. B. Esq; Lord of, &c. obtained his Consent under his Hand, &c. to erect, &c. provided, &c.

May you therefore be pleased to grant to your poor Petitioner, the Order of this Court, to enable him to erect a Cottage there, for Habitation of himself and his poor Family, &c.

The Order of Sessions thereon.

At the General Quarter-Sessions of the Peace, &c. held, &c.

Midd. to **W** Hereas A. B. of, &c. Labourer, hath obtained the Consent of the Lord of, &c. for erecting, &c. and he having also petitioned us, &c. to grant to him such an Order: We do therefore hereby order and give our Consent for erecting, &c.

Indictments concerning Inmates.

THERE cannot be a joint Indictment against several: it must be several against every Person who suffers Inmates in their Houses. 2 Rol. Rep. 164.

An Indictment for Building a Cottage.

Midd. to **T**HE Jurors, &c. That T. P. of H. in the said County, Taylor, on the 30th Day of April in the fifth Year of the Reign, &c. at H. aforesaid in the said County hath built a certain Cottage for Habitation, and hath then and there willingly upheld, maintained and continued such Cottage so erected for Habitation for the Space of ten Months and upwards, when in Fact four Acres of Ground (measured according to the Form of the Statute) being of his own Freehold never were added or assigned to be continually occupied with the
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said

Cottage.

said Cottage, against the Form of the Statute in such Case made and provided, and also against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

An Indictment for suffering Inmates against the Occupier of a House,

Sussex, to **T**HE Jurors, &c. That J. O. late of the Parish of H. in the said County of Sussex, Husbandman, on the first Day of September in the fifth Year of the Reign, &c. being the Occupier of a certain House at the Parish aforesaid in the said County, did then and there divide and convert the said House into four several Tenements for inhabiting other Men, and that the said J. O. did voluntarily place several Under-tenants there to inhabit with their Families in the said Tenements so converted and divided by him, as is before related, and did suffer the said several Under-tenants with their said Families to dwell and inhabit in the said Tenements from the first Day of September aforesaid in the Year above-mentioned for the Space of ten Months then next ensuing, to the great Danger of infecting the Inhabitants there with evil Diseases, and to the Impoverishment of the Parishioners of the Parish aforesaid, and to the Burthening the said Parish with many Poor, to the common Nuisance of all the Subjects of our said Sovereign Lord the King there inhabiting, and also against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided,

An Indictment for converting of an House into a Cottage, and for continuing of it,

Sussex, to **T**HE Jurors, &c. That on the fourth Day of July in the fifth Year of the Reign, &c. one T. P. of H. in the said County of Sussex, Taylor, did convert the Western Part of a certain Mansion-house (that is to say, a Yard and two Chambers) of him the said T. P. then and yet being in H. aforesaid in the said County, into a Cottage for Habitation, (if the House be new built, then say) did erect a Building into a Cottage for Habitation, so that one S. P. of H. aforesaid in the said County, Labourer, might use the said Western Part of the House aforesaid for his Habitation, which said S. P. now inhabits in the said Cottage, when in Fact the said T. P. never added or assigned to the said Cottage, four Acres of Ground, to be accounted according to the Ordinance for Measuring

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Measuring of Land, of the Freehold of him the said T. P. or of his Inheritance lying near to the said Cottage, to be continually occupied therewith, so long as the said Cottage shall be inhabited, to the great Contempt of our said Sovereign Lord the King, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided. And they further present that the said T. P. at H. aforesaid in the said County did willingly uphold, maintain and continue the said Cottage, so as is before related to be converted into a Habitation, from the said fourth Day of July in the Year above-mentioned to the fourth Day of May then next ensuing, to the great Contempt of our said Sovereign Lord the King, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and also contrary to the Form of the Statute in such Case made and provided.

Cotton. See **Wool**, and working thereon.

County-Court.

Sheriff, Under-Sheriff, or Sheriff's Clerk, entering Plaintiff in County Court, in Absence of the Plaintiff or his Attorney, or above one Plaintiff in one Cause, they or the Plaintiff may be examined by a Justice of Peace, and he shall certify that Examination three Months afterwards into the *Exchequer*; and the Offender must pay 40 s. to the King and Prosecutor.

Sheriff shall issue *Estreats* out of the County-Court: Two Justices (*Quorum unus*) shall view them; and there must be Two Parts indented, and sealed by the two Justices and Sheriff, and one of them must remain with the Sheriff. 11 H. 7. c. 15.

See **Parliament**.

Counterfeits.

IT is an Offence at Common Law; and 'tis likewise enacted, That getting Money or Goods falsely and deceitfully by counterfeit Letters, &c. and being convicted thereof at Quarter-Sessions, shall suffer any corporal Punishment, except Death. 33 Hen. 8. c. 1. §. 2.

Two

Two Justices (*Quorum unus*) may bind the suspected Person to appear at the next Sessions, or bail him till that Time, &c. or may commit him at their Discretions. 33 H. 8. c. 1. §. 3.

One Justice may bind Cheats, &c. to their Good Behaviour; so to Affizes or Sessions, or send them to the House of Correction, especially by Order of Sessions. *Dalt.* 63. And Counterfeiting a Pass, is punishable by Pillory and Fine. *Ibid.* 64.

One was indicted and fined for counterfeiting a Protection, though in the Name of one who had no Power to grant it. 1 *Sid.* 142. See also *Latch* 202. 1 *Bulst.* 149. *Cro. Car.* 234. *Keling* 39. *Style* 45. *Cro. Car.* 564. and the Stat. 22 & 23 Car. 2.

Cro. Car. 564.
Terry's Case.

• 3 *Inst.* 133.

Hubert's Case,
Cro. Eliz. 531.
12 *Rep.* 123.
Moor 630. S. C.

Anno 15 Car. One Terry got a Wedge of Silver, Value 200 *l.* by a false Note, in the Name of another; and being convicted, he had a Sentence to stand in the Pillory, and was fined 500 *l.* and committed during Pleasure; though my Lord *Coke tells us, That a Man cannot be fined upon the Statute for this Offence, because the Law directs only a corporal Punishment.

At another Time, one Hubert of Norfolk procured Webster to personate A. B. who was then beyond Sea, and in his Name to acknowledge a Fine of his Lands, for which he was fined and imprisoned, and the Fine levied was made void; but now by 21 *Jac. cap.* 126. §. 2. this is made Felony.

An Indictment for counterfeiting of a Letter.

Middlesex, **T**HE Jurors, &c. That one J. O. late of H. to wit, in the County of Suffex, Yeoman, on the first Day of May in the fifth Year of the Reign, &c. at L. in the said County, did falsely and deceitfully make, contrive, and devise a certain false and counterfeit Letter, in the Name of L. aforesaid in the said County, Esq; directed to one T. P. then a Tenant to the said R. B. (or as the Case is) and afterwards, that is to say, on the said first Day of May in the Year above-mentioned, the said J. O. at L. aforesaid in the said County, did falsely and deceitfully give and deliver the said false and counterfeit Letter to the said T. P. by Colour and Means of which said false and counterfeit Letter, so as is before related to be then and there delivered to the said T. P. the said J. O. on the said first Day of May in the Year above-mentioned, at L. aforesaid in the said County, did falsely and deceitfully obtain and get into the Hands and Possession of him the said J. O. and to his own Use, twenty Pounds of good and lawful Money of Great Britain of the Money of him the said R. B. to the great Damage

Damage of him the said R. B. to the bad Example of other Offenders in the like Case, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and also contrary to the Form of the Statute in such Case made and provided.

Custom and Custom-house Officers.

Resisting, hindring, affronting or abusing, or wounding Officers or Deputies, shall be committed by the next Justice till next Quarter Sessions; to be fined, not exceeding 100 *l.* and to remain in Prison till discharged by Order of the *Exchequer*, or till he discover who set him to work. 13 *Ed* 14 *Car.* 2. *c.* 11. *§.* 6.

One Justice, by Oath of two Witnesses, may commit any Person assisting in the Landing or Shipping prohibited Goods, or for which any Duty is payable, if such Person have no Warrant, or if no Officer be present; there to remain till he find Sureties for his Good Behaviour, and till he be discharged by the Lord Treasurer, *&c.* *§.* 7.

For the second Offence, Commitment for two Months, or till he pay 5 *l.* to the Sheriff, for the Use of the King; or till he be discharged by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the *Exchequer.* *§.* 7.

Officers for collecting the Duties on Candles and on Soap ^{8 Ann. c. 9. f.} may be sworn before the Commissioners of Excise, or a Justice of Peace, well and truly to execute their Office; and afterwards the Justice must give such Officer a Certificate thereof. ^{11.}

Several Duties are by the said Act imposed on Paper, Linens, Stuffs, Silk, Callicoes, *&c.*

And upon Oath made by a credible Person, that he hath Reason to suspect some of those Goods, for which the Duties ought to be paid, are in the Possession of a Dealer or Trader, without being marked or stamped as the Act directs; Two Justices (if not within the Weekly Bills) may by Warrant give Power to any Officer of the Duties, without the Assistance of a Constable, in the Day-time, to search for the same, and to open Doors, Chests, Trunks and Packets, to seize such Goods, and to bring them to the next Office to the Place where they were seized.

Custom and Custom-house Officers.

A Warrant against those who abuse or resist a Custom-house Officer, and a *Mittimus* to send the Offender to Gaol.

To the Constable, &c. of H. in the County of *Sussex*, and to the Keeper of the Common Gaol there.

Middlesex, **W** Hereas Complaint hath been made unto me to wit, by T. P. of H. &c. being an Officer of his Majesty's Customs, That J. O. and T. B. of H. aforesaid, Yeomen, did lately, with Force of Arms, resist the said T. P. at T. in your County, being then in the Execution of his said Office: These are therefore in his Majesty's Name to command you, the Constable of, &c. to apprehend the said J. O. and T. B. and to deliver them to the Keeper of the common Gaol in the said County, together with this Warrant: Hereby also commanding you the said Keeper to take into Custody the said J. O. and T. B. and them safely to keep until the next Quarter-Sessions, which shall be held for the same County, there to be punished according to the Statute in that Case made and provided. And hereof fail not at your Perils. Given under my Hand and Seal, &c.

R. B.

A Warrant against an Offender assisting in the landing Goods, and carrying them away without paying Custom.

To the Constable and Tithing-man of H. in the County of S. and to either of them.

Two Witnesses. *Sussex*, to **W** Hereas Complaint hath been made unto me, to wit, That J. O. of, &c. hath lately assisted in the Landing and Carrying away several Goods at L. in the said County, for which a certain Duty was due and payable to his Majesty, which was not paid: And whereas it appeareth to me, upon the Examination of, &c. and others, That he the said J. O. had not any Warrant for his so doing, and that he had not given Notice thereof to any Officer of the Customs, and that no such Officer was there present: These are therefore in his Majesty's Name to command you to apprehend the said J. O. and bring him before me, or some other Justice of the Peace for this County, to answer the Premises: And hereof fail not. Given under my Hand and Seal, &c.

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Commitment for the first Offence.

To the Constable of, &c. and to the Keeper of the Common Gaol of the County of *Suffex*.

Suffex, to wit, **W** Hereas it hath been duly proved before me, ^{13 & 14 Car. 2. c. 11.} That J. O. of, &c. hath (as in the former Warrant) : These are therefore in his Majesty's Name to command you the said Constable, to convey the said J. O. to the common Gaol, and to deliver him to the Keeper thereof, together with this Warrant : Hereby also requiring you the said Keeper to take the said J. O. into your Custody, and him safely to keep until he shall find Sureties for his Good Behaviour, and until he shall be discharged from the same by the Lord Treasurer, Chancellor, Under-Treasurer or Barons of the Exchequer : And hereof fail not at your Perils. Given, &c. ^{One Justice. Two Witnesses.}

Commitment for the second Offence.

Suffex, to wit, **W** Hereas (as in the former Warrant) : And ^{One Justice. Two Witnesses.} whereas the said J. O. hath been already duly convicted before this Time for the said Offence, and hath since his Conviction offended in the like Kind : These are therefore in his Majesty's Name (as in the former Warrant), and him safely to keep for the Space of two Months, without Bail or Mainprize ; or until he shall pay unto the Sheriff of the said County the Sum of 5 l. for the Use of his said Majesty ; or until he shall be from thence discharged by the Lord Treasurer, Chancellor or Under-Treasurer, or Court of Exchequer : And hereof fail not. Given, &c.

After 1 Aug. 1720. If any Officer of the Customs be forcibly hindered, wounded or beaten in the due Execution of his Office by any armed Persons tumultuously assembled, to the Number of Eight or more, the Offender being duly convicted thereof shall, by Order of the Court before whom the Conviction was made, be transported to some of the King's Plantations in *America*, for such Terms as the Court shall think fit, but not exceeding seven Years, as by an Act 4 *Georgii* ; and if he return before the Expiration of the Term, shall suffer as a Felon, and have Execution awarded against him, as one attainted of Felony, without Benefit of Clergy. ^{6 Geo. 1. c. 21. s. 34. 8 Geo. 1. c. 18. s. 6.}

But if such Offender within two Months after his Offence, and before his Conviction, shall discover two or more of his Accomplices to the Commissioners of the Customs, so as they be

Custom, and Custom-house Officers.

be convicted of the said Offence, the Discoverer shall have 40*l.* for every Offender discovered, and shall himself be discharged.

Any other Person discovering within three Months after the Offence, &c. shall have the like Reward of 40*l.* to be paid by the Cashier of the Customs.

Person buying or receiving run Goods, knowing them to be so, being convicted upon Appearance or Default, by the Oath of one Witness or his own Confession, before a Justice of the Peace of that County where the Offence is committed or the Offender found, forfeits 20*l.* Half to the Informer, Half to the Poor, to be levied by Justices Warrant of Distress; and for want of Distress Commitment to Prison for three Months. 8 *Geo.* 1. c. 18. §. 10.

All Seizures of Vessels of fifteen Ton or under, carrying smuggled or run Goods, &c. or of Horses, Cattle or Carriages used in the removing such Goods, shall be heard and determined by any two Justices of the Peace residing near the Place, as by 6 *Geo.* 1. c. 21. except as there excepted; and their Judgments to be final, not liable to Appeal or *Certiorari*. 8 *Geo.* 1. cap. 18. §. 16.

And by §. 17. any two Justices of *London* or *Westminster* shall have like Power as to determining such Seizures made within those Cities.

On Information upon Oath to any Justice of the Peace, that any Persons to the Number of three, have been assembled for the running of Goods, and have been armed with offensive Weapons, he may grant his Warrant to the Constable, to take to his Assistance as many as are necessary, to apprehend the Person informed against; and if upon Examination he finds Cause, he may commit to Gaol without Bail till discharged by Law: The Person convicted is to be transported for 7 Years. 9 *Geo.* 2. c. 35. §. 10.

Taker of the Person guilty of such Offence to have 50*l.* upon his Conviction; if maim'd or dangerously wounded in endeavouring to apprehend him, upon the Conviction shall have 50*l.* over and above such Reward; if any Person is kill'd in Pursuit of such Offenders, his Executors or Administrators, upon Certificate of the Justices of Assize, or the two next Justices of the Peace, shall have 50*l.* over and above any other Reward. §. 11.

Offender within three Months after Conviction discovering two Accomplices to the Commissioners of Excise, so that they are convicted, shall have 50*l.* for each Offender convicted, and be discharged of the Offence. §. 12.

All Persons to the Number of two that shall be found passing within five Miles from the Sea-Coast, or any navigable River, with any Horse or Carriage, whereon are loaded more than six Pounds of Tea or five Gallons of Brandy, or any

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any other foreign Goods, landed without Payment of Duty, due Entry, or not having Permit, and shall carry any offensive Arms, or wear any Disguise, or forcibly resist the Officers of Customs or Excise in Execution of their Office, they are deemed Runners of foreign Goods within 8 *Geo. 1. c. 18.* the Proof of the Entry and Payment to be on the Persons convict; transported as Felons for seven Years.

Like Clause for rewarding Persons apprehending such Offenders, and for the Offenders impeaching their Companions.

Upon Information on Oath, before Justice of the Peace, of Persons loitering within five Miles from the Sea-Coast or navigable River, that there is Reason to suspect they wait with Intent to aid and assist in the running of Goods, the Justice may, by his Warrant, bring them before him; and if they don't give a satisfactory Answer, they may be sent to the House of Correction for a Month and whipt; 20 s. to the Informer: But if the Person desire Time to clear himself, he shall not be punished, but may be committed to Prison 'till he gives Account, or gives Security not to be guilty of the like Offence. 9 *Geo. 2. cap. 35. §. 18. §. 19.*

Persons employed in carrying Goods run, in whose Custody the same shall be found, knowing the same to be run, and convicted on Appearance or Default, by one Witness and before one Justice, forfeit treble the Value of the Goods, Half to the Informer, Half to the Poor, by Warrant of Distress; and for want of Distress, Commitment to House of Correction not exceeding three Months. §. 21.

On all Trials of Seizures the Seizure shall be taken to be made as set forth in the Information, without any Evidence, and the Justices are to proceed to the Trial of the Merits of the Cause, without inquiring into the Seizure. §. 34.

Persons opposing Force to Force in Execution of this Act may plead the General Issue, are bailable, and in any Case the Defendant upon the Act may plead the General Issue and shall recover treble Costs.

Cut-work. See Bone-Lace.

Cutting out Tongues, &c.

BEfore the Statute of 5 *H. 4.* it was not Felony to cut out the Tongue, or put out the Eyes of any one; and therefore when Men were beaten, wounded and robbed, it was usual to put out their Eyes, or cut out their Tongues, that the Offenders might not be accused.

This

5 H. 4. c. 5.

This Mischief is prevented by that Statute, by making it Felony : And my Lord Coke tells us, That from the Time of the Making of this Law, for above the Space of Two hundred Years, he could not find more than one Person indicted upon this Act.

37 H. 8. c. 6.

But notwithstanding this Law, Cutting off Ears was not Felony ; for by the Statute of 37 H. 8. it was no greater Offence to cut off the Ear of a Man, than to cut out the Tongue of any living Beast ; for in both Cases the Offender is to forfeit 10*l.* to the King, and treble Damages to the Person grieved.

It was a Question after these Laws, and before the Statute of 22 Car. 2. Whether cutting of the Privy Member, tho' the Man should be taken in Adultery, was Felony or not ? For by *Bracton* it is said, That in such Case, *sequitur pœna aliquando capitalis* (sometimes a capital Punishment follows) ; and yet I find, that Anno 13 H. 3. one *John*, a Monk, was taken by *Henry Hall* in the Act with his Wife, and he cut off the Privy Members of the Monk, and was only indicted for a Mayhem. 3 *Inst.* 188.

22 & 23 Car. 2.
c. 1. f. 7.
commonly
called the Co-
ventry Act.

But now by the Statute of 22 Car. 2. Cutting out an Eye, Slitting of the Nose, or Cutting it off, or the Lip, or Cutting off, or Disabling any Limb or Member, with an Intention to maim or disfigure the Person, is made Felony without Benefit of Clergy, in the Actor, Counsellor, Aider or Abettor being privy to the Offence.

One *Stapleton* was convicted at the Sessions in the Old Baily upon this Act, for putting out the Eye of one *Russel*, by flinging *Mercury* in his Face ; and afterwards in *Hillary* 1 *Jac.* he pleaded his Pardon.

As likewise were *Woodburn* and *Coke*, in the eighth Year of his late Majesty King *George* the First, at the Assises in *Suffolk*, for the maiming *Edw. Crispe*, Esq; and were afterwards executed. See the Indictment after.

An Indictment for putting out Eyes.

5 H. 4. c. 5.

Suffex, to THE Jurors, &c. That J. O. of H. in the
wit, said County, Yeoman, on the twenty-third
Day of July in the fifth Year of the Reign, &c. in a certain
Place at H. aforesaid in the said County (called the Wallyns),
with Force and Arms did make an Assault upon one T. P. of
H. aforesaid in the said County, Yeoman, then and there being
in the Peace of our said Lord the King, and then and there of
his Malice forethought, did feloniously tear up and pull out the
Eyes of him the said T. P. with * a certain Stick of the Price
of one Penny, which he the said J. O. then had in his Right
Hand, against the Peace of our said Sovereign Lord the now
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* Or with his
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King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided.

An Indictment for Cutting out a Tongue.

Suffex, to **T**HE Jurors, &c. That R. N. late of, &c. wit, on the thirtieth Day of April in the fifth Year of the Reign, &c. with Force and Arms, at Lewes in the said County, did make an Assault in and upon one T. P. then and there being in the Peace of God, and of our said Sovereign Lord the King, and did beat and wound him, and then and there feloniously tear and cut out the Tongue of him the said T. P. with a certain small Knife of the Price of Six-pence, which be the said R. N. then had in his Right Hand, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided.

A Copy of an Indictment upon the Statute of the 22 & 23 Car. 2. c. 1. intituled, *An Act to prevent malicious Maiming and Wounding.*

Suffolk, to **T**HE Jurors for our Sovereign Lord the King wit, upon their Oath present, That John Woodburne late of the Borough of Bury St. Edmonds in the County of Suffolk, Labourer, and Arundel Coke, otherwise Cooke, late of the Borough aforesaid, Esq; after the twenty-fourth Day of June in the Year of our Lord One thousand six hundred seventy and one, to wit, on the first Day of January in the eighth Year of the Reign of our Sovereign Lord George, now King of Great Britain, &c. intending to maim and disfigure one Edward Crispe, Gentleman, then and yet being a Subject of our said Sovereign Lord the King, at the Borough aforesaid in the said County, with Force and Arms, &c. did on Purpose, and of Malice forethought, and by lying in Wait unlawfully and feloniously make an Assault in and upon the said Edward Crispe, then and there being in the Peace of God, and of our said Sovereign Lord the King; And that the said John Woodburne did on purpose, and of Malice forethought, and by lying in Wait then and there unlawfully and feloniously slit the Nose of the said Edward Crispe, with a certain Bill, of the Value of one Penny, which be the said John then and there had and held in his Right Hand, with Intention in so doing to maim and disfigure the said Edward Crispe; And that the said Arundel, at the Time of the Felony aforesaid by the said John Wood-

Cutting out Tongues, &c.

burne in Manner and Form aforesaid unlawfully and feloniously done and committed, to wit, on the said first Day of January in the eighth Year aforesaid, at the Borough aforesaid in the said County, on Purpose, and of his Malice forethought, and by lying in wait unlawfully and feloniously was present, aiding and abetting the said John Woodburne feloniously to do and commit the said Felony in Form aforesaid. And so the Jurors aforesaid upon their Oath say, that the said John Woodburne and Arundel on the said first Day of January in the eighth Year aforesaid, at the Borough aforesaid in the said County, with Force and Arms, &c. on Purpose and of their Malice forethought, and by lying in wait unlawfully and feloniously have and each of them hath committed and done the said Felony in Form aforesaid, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Deer-stealing.

THE Statutes which relate to this Head are, viz. 13 R. 2. c. 13. That a Layman not having 40s. per Ann. or a Clerk not having 10l. per Ann. shall not keep a Dog to destroy any Deer: The Punishment is Imprisonment for a Year.

The next Statute is 5 Eliz. c. 21. §. 3. Entering any Park to kill or chase Deer without Licence of the Owner, must suffer three Months Imprisonment, and be bound to Good Behaviour for seven Years.

But the Party grieved might in Sessions release the Good Behaviour, and might likewise in Sessions recover treble Damages. §. 5.

These Laws were ineffectual to suppress Offences of this Nature, and therefore Anno 3 Jac. c. 13. a Statute was made, That if any Man should be convicted in the Sessions of unlawful Chasing or Killing any Deer, he should pay treble † Damages to the Party grieved (or by the Statute of 7 Jac. 13. §. 4. the Party might at his Choice take 10 l.) suffer three Months Imprisonment, and afterwards to remain in Prison till he found * Sureties for his Good Behaviour for seven Years.

† These were to be assessed after three Months expired, and by the Justices.

* The Party being satisfied, the Justices in Sessions might release the good Behaviour.

This Statute seemed to extend only to the Chasing and Killing in Parks and inclosed Grounds, &c. and no Reward for an Informer; and therefore Anno 13 Car. 2. c. 10. another

other Statute was made, *viz.* That not only *Courfing* and *Killing*, but *Hunting* or *Taking* away Deer in any Ground where Deer are kept, the Forfeiture is 20*l.* one Moiety to the Informer, the other to the Owner of the Deer.

The Offence must be against the Consent of the Owner, or the Person intrusted to keep the Deer; the Prosecution must be within six Months after the Offence; the Conviction must be before one Justice of the Peace by Confession or Oath of one Witness, and the Penalty is to be levied by Warrant from that Justice, before whom the Offender was convicted, by Distress; and if that could not be taken, then he might be committed to the House of Correction for six Months, or the common Gaol for a Year, and not be discharged till Security be given for Good Behaviour, for one Year after his Enlargement.

Those who are aiding or assisting therein, incur the same Punishment. Where the Offender is punished by Force of this Act, he shall not incur the Penalty of any other Law for the same Offence.

The Question was, Whether he who lent Dogs to another to hunt, was aiding and assisting therein, (*viz.*) in the *Hunting*? And by the Opinion of three Judges he was; but Holt Chief Justice was of a contrary Opinion; for this being a penal Law, shall be construed strictly; and if so, then he who lent the Dogs could not be *assisting* in the Act of *Hunting*, and so not within the Words of the Statute, *aiding and assisting therein*, tho' he might be assisting *thereunto*.

A Justice of Peace enter'd into a Glover's House, and finding a Deer-Skin asked him how he came by it, who told him that he bought it of R. B. and he not giving a good Account of himself, the Justice convicted him; and held good.

But the Penalty of 20*l.* was found by Experience too little to deter Offenders of this Nature; for they might kill and wound many Deer at the same Time, and yet forfeit no more; therefore Anno 3 & 4 W. & M. another Statute was made, *viz.* That for *Courfing* and *Hunting* the Offender forfeits 20*l.* and for *taking in Toils, Killing and Wounding any Deer*, forfeits 30*l.* for every Deer, one Third to the Informer, the other to the Poor of the Parish where the Offence is committed, the other to the Owner of the Deer.

King and Monk M. 13 Geo. 2. This was a Conviction for Deer-stealing upon the Oath of one Witness, for unlawfully aiding and assisting in Killing and carrying away a Deer out of the Purlieu of *Waltham*, not being intrusted with the Keeping thereof, and without the Consent of the Owner or Keeper of the said Purlieu. First Objection, That there was no Averment that the Purlieu was a Place where Deer were usually kept. Secondly, No Averment that it was without the Consent of the Person intrusted with the Purlieu. Thirdly, It

13 & 14 Car. 2.

Queen & Whistler H. 1
Ann. Holt's
R. 215.
Salk. 543. S. C.
Queen & Nash
M. 1 Ann Salk.
542.

1 Salk. 383.
Queen & Jennings, T. 7 Ann.

3 & 4 W. c. 10.

does not appear who was the Owner of the Purlieu ; for as the Owner by both the Acts is intitled to Part of the Penalty, it is necessary to aver that he had not the Consent of the Owner ; nor does it appear but that the Person convicted might be Owner himself ; for 'tis only laid that *A. B.* was the Possessor of the Field, which he might be, and yet be only Lessee for Years of the Person convicted. Fourthly, As to the Description of the Offence, 'tis not said whom the Defendant aided and assisted, nor in what Manner, either by coursing, wounding, killing or carrying away, or by being present or attending the Engines ; which are different Offences liable to different Penalties ; that the last Act does not repeal the former, only declares a Person convicted on that Act shall not be prosecuted on the others. Statutes that take away Clergy shall not extend to Accessaries without express Words. *And. 195. Keel. 26.* A Person may be acquitted as Principal, and after indicted as Accessary ; a Person can't be said to be assisting to himself ; if the Person was unknown, it ought to be laid as aiding a Person unknown. *Keeling 10. Co. Ent. 56, 57.*

Per Curiam : 'Tis an odd Construction to refer these Words to a Purlieu, which is a Place disforested, where Deer can't properly be said to be kept, for they are the Deer of the Forest, not of the Purlieu ; but the Legislature did not give an Authority of destroying Deer without the Consent of the Owner in the Purlieu ; neither can the Owner give Authority to another to destroy them ; the Clause *and other Grounds inclosed* seems naturally to refer to the three last Places mentioned, Paddocks, Woods, Parks, which Places have vulgarly the Denomination of Parks, tho' not strictly so to be considered.

As to the second and third Objections in relation to the Consent, it must depend on the Construction ; 'tis aver'd to be without the Consent of the Owner of the Deer, or the Person having Custody of them ; but they object it refers to the Owner of the Place where, and that they did not set forth that the Field was not the Defendant's. A proper Answer to that is, he should then have pleaded it in his Defence, according to the Case of *King and Brian, H. 11 Geo.* upon the Gin Act, where it was objected that there was no Averment, that the Gin was not to be used in Medicine ; and there said there was no Occasion for such Averment, and that the Defendant must make use of it in his Defence.

Fourthly, As to its not being fully set forth and described whom he aided and assisted, the Case of Principals and Accessaries will not affect it, for 'tis set forth in the Words of the Act itself, *Queen and Whistler, H. 1 Ann.* and these Persons are charged as Principals in the Commission of the Fact aiding and

and assisting in, and not necessary to set forth how the Deer was wounded, whether with a Knife or a Gun.

In *Queen* and *Whistler* it was not disputed but that the Expression included Principals; but the Doubt was whether it should be extended further.

The Prosecution must be within a † Year after the Offence; † If the Prosecution be within the Year, tho' the Conviction is after the Year, it is good. the Conviction before one Justice of the County where it was done, or the Party taken; it must be by Confession, or Oath of one Witness: The Penalty is to be levied by Distress, by Warrant of that Justice before whom that Offender was convicted; and if no Distress can be found, then the Party may be committed for a Year, and stand in the Pillory one Hour on a Market-day, in a Town next adjoining to the Place where the Offence was done.

Any Prosecution for Offences against the Act 3 & 4 W. 9 Geo. 1. c. 22. f. 13. called the Black Act. may be commenced within three Years from the Time of the Offence, but not after.

A Constable, &c. may by Warrant from one Justice enter and search the Houses of suspected Persons, and if he find any Venison, or Skins of Deer, or Toils, he shall carry the Person before a Justice; and if he do not give a good Account how he came by them, and produce the Party of whom bought, or prove the Sale upon Oath, he shall be convicted of the Offence, and be subject to the Penalties for Killing of Deer. 6 Geo. 1. c. 22. f. 17. 3 & 4 W. & M. c. 10. f. 3.

If the Offender do not pay down the Money upon the Conviction, the Constable may detain him till a Return be made of the Warrant for distraining, but he cannot keep him in Custody above two Days. Sect. 4.

Before *Certiorari* shall be allowed to remove a Conviction or other Proceedings, the Party convicted shall enter into a Bond of 50*l.* to the Prosecutor, with Sureties to be approved by the said Justice, to pay full Costs upon Oath, within a Month after the Conviction is confirmed, or a *Procedendo* granted. Sect. 6.

Conviction for Deer-stealing on 3 & 4 W. & M. Motion to quash it: First Exception, It is laid to be in *Quodam loco vocat'* Chobly Walk *infra Chasam*, &c. Now this must be intended to be a Vill, and a Vill is no Part of a Chase, and 'tis not aver'd that the Deer were usually kept there; and if it had been said in *Parco*, it had not been good without averring that Deer are usually kept there. Secondly, The Conviction is 18 Feb. 5 Ann. and the Oath on which 'tis founded is 6 Ann. so the Conviction appears to have been before any Information. *Curia*: This being said to be a Walk in a Chase, we shall take Notice of it as belonging to the Forest Law, and not presume it to be a Vill; 'tis alledg'd he kill'd a Deer in that Chase, which implies that Deer were kept there. As to the Second, it was said *eodem die*,

which particularizes the Time, and compleatly describes it without the Year, which being added falsely is only Superfluity. *Queen and Valet, H. 12 Ann.*

5 G. 1. c. 15. f. 1. He must likewise at the same Time enter into another Bond to the Justice before whom the Conviction was made, in the Penalty of sixty Pounds for each Offence, to prosecute the *Certiorari* with Effect, and to pay such Justice the Forfeiture due upon the Conviction, to be distributed as the Statute directs, or to render the convicted Person to such Justice, within one Month after the Conviction shall be affirmed, or a *Procedendo* granted; or in Default thereof, the Justice may proceed to the Execution upon the Conviction.

Sect. 2. After the Conviction is affirmed, and the Rule of Court thereof delivered to the Justice, he may proceed as if a *Procedendo* had been granted.

Sect. 4. A Person convicted upon the Statute 3 & 4 W. shall, before he is discharged, enter into a Bond of 50 l. to the Person against whom the Offence was committed, with a Condition for his good Behaviour, and that he will not offend in like Manner; which if he refuse, he shall be committed to the County-Gaol until he give such Bond; and if he shall afterwards be convicted for any Matter or Thing in that Statute, then the Bond shall be deemed to be forfeited, and the Penalty shall be recovered with full Costs, in any Court at *Westminster*, to be distributed in the same Manner as the Forfeitures by that Act: and the Party convicted shall be likewise liable to the Penalty and Forfeitures in that Act.

5 G. 1. c. 28. f. 1. Entering into a Park or Paddock, or other inclosed Ground where Deer are usually kept, and wilfully wounding or killing any red or fallow Deer there, without the Consent of the Owner or Person intrusted with the Custody of the Park, or shall be aiding therein, and being indicted thereof and convicted by Verdict, or by his own Confession, shall be transported for seven Years, and the Court may make over such Offender to the Use of any Person who will contract for the Performance of his Transportation.

1 Salk. 381. Queen & Bar. 1st. Upon a *Certiorari* on a *Conviction* for Deer-stealing, it was objected, That it appeared to be a Year after the Day of the Information; but adjudged that 'tis good, because 'tis not from the *Conviction*, but from the *Information* that the Time is to be computed; for if the *Information* is in due Time, the *Conviction* may be at any Time afterwards; and the Penalty need not be distributed by the *Conviction*, (*viz.*) 10 l. to the Party grieved, 10 l. to the Poor, and 10 l. to the Informer; for the Judgment in such Cases seldom makes a Distribution; 'tis enough to say, That *convictus est & foris-faciat 30 l. juxta formam Statuti* (he is convicted, and hath forfeited 30 l. according to the Statute.)

Conviction

Conviction of Deer-stealing was affirmed in *B. R.* where upon a *Levari facias* was awarded to the Sheriff, who levied and sold the Goods; adjudged that the Sale was good, because the Record cannot be sent back again to the Justices; and as the Court of *B. R.* have Power to confirm the Conviction, by Consequence they have Power to award Execution, which must be to the Sheriff, who is their Officer, and not to the Constable; and it must be by *Levari facias*, because the Words of the Statute are, That the Offender shall forfeit, &c. to be levied by Distress; and where the Law gives a Distress for a publick Benefit, the Officer may sell.

1 Salk. 379.
King & Speed.

Any Keeper or Officer of Forest, Park, or Place where Deer are usually kept, who shall be convicted on this Act for killing or taking away any red or fallow Deer, or being aiding or assisting therein, without the Consent of the Owner, or Officer in chief, shall forfeit 50*l.* for each Deer, to be levied by Distress, and to be distributed as aforesaid, and for want of such Distress, shall be committed for three Years without Bail, and set in the Pillory two Hours, in a Market-Town next the Place where the Offence was done, by the chief Officer of the Town, or his Under-Officer.

5 Geo. 1. c. 15.
f. 5.

Any Person pulling down, or causing to be pulled down, a Pale or Pales, or Wall of any Park or inclosed Place where red or fallow Deer are kept, without the Consent of the Owner; and being convicted thereof by his own Confession or Oath of one Witness, before one Justice of the County where the Offence was done, shall be subject to the Forfeitures and Penalties by this Act for the killing one Deer, in the same Manner as if he had been convicted thereof.

5 G. 1. c. 15.
f. 6.

A Defendant sued for putting this Act, or 3 & 4 *W.* in Execution, may plead the General Issue, and give the Acts and Special Matter in Evidence, and if he recover, shall have treble Costs, to be recovered as any other Costs are.

Where any Venison or Skin of a Deer shall be found in the Custody of a Person, and it shall appear that the Person bought it of one who might be justly suspected to come by it unlawfully, and he doth not produce the Party of whom he bought it, or prove on Oath his Name and Place of his Abode, then the Person who bought it shall be convicted of such by one or more Justices, and shall be subject to the Penalties inflicted for Killing a Deer by the Act 3 & 4 *W.*

9 G. 1. c. 22.
continued to
1 Sept. 1744.
10 Geo. 2. c. 32.

The Defendant was convicted at the Sessions, and fined for Deer-stealing; and a Writ of Error was brought in *B. R.* and the Court was moved, that the Offender might be bailed till the Errors should be determined; but it was denied, because he was in Execution for a Fine. *Sid.* 286.

There were two Persons convicted for Deer-stealing, and Judgment was given, That each of them should forfeit 30*l.* and this being removed into *B. R.* it was objected, that there

Queen against
King. 1 Salk.
182.

Deer-stealing.

ought to be but one 30*l.* forfeited; but adjudged that the Forfeiture is not in Nature of a Satisfaction to the Party grieved, but as a Punishment to the Offender, and the Words of the Statute are, that they shall respectively forfeit, and Crimes are several, tho' Debts are joint.

Punishment of those who keep Guns and Engines to kill Deer.

BY the Statute of 19 *H. 7. c. 11.* none shall keep Deer-Hays, or Buck-stalls, nor shall stalk with Bush any Deer, except in his own Park, under Penalty of forty Shillings *per Month* for keeping such Deer-Hays, &c. and ten Pounds for Stalking.

Two Justices in Sessions may examine the Offender, and commit him till he pay the Forfeiture, of which the Justices are to have the Tenth Part.

By the Statute of 3 *Jac. 1. c. 13. §. 5.* he that keeps a Gun to kill Deer, not having 40*s. per Ann.* in Lands, or 200*l.* in Goods, any Person having 100*l. per Ann.* may take away the Gun and keep it.

An Indictment for chasing a Buck in the King's Forest.

Middlesex, to **T**HE Jurors, &c. That J. O. of H. in wit, the said County, Yeoman, and T. P. of the same Place, Yeoman, on the twenty-seventh Day of October in the fifth Year of the Reign, &c. did break and enter the Forest of our said Sovereign Lord the King of L. in the said County, and with Greyhounds did hunt and course one Buck of the Value of three Pounds then and there found, without the Consent, and against the Will of our said Sovereign Lord the King, and at W. within the Precinct of the said Forest, did hang and kill the said Buck with Wares, and did unlawfully take and carry away the said Buck so hung and killed against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided.

A Warrant against a Person for stealing Deer, (or as the Fact is.)

To the Constable of the Parish of H. &c.

Suffex, to wit, **W** Hereas it hath been duly proved before me, That ^{3 & 4 W. & M.} J. O. of H. in the County aforesaid, did on ^{One Justice.} the 10th Day of October last past unlawfully course (or as the Fact is) one Fallow Deer in the Park of J. S. of, &c. without his Consent, or of the Person intrusted with the Keeping thereof, contrary to the Statute in that Case made and provided: These are therefore in his Majesty's Name to require you to levy by Distress and Sale of the Goods of the said J. O. the ^{For every Deer wounded 30l.} Sum of 20 l. which said Sum is forfeited by him, being convicted before me for the said Offence; and that you pay one third Part thereof to T. P. who informed me of the said Offence so committed and done by the aforesaid J. O. and another third Part unto the Church-wardens or Overseers of the Poor of the Parish of P. where the said Offence was committed, for the Use of the Poor of the said Parish, and the other third Part thereof to J. S. the Owner of the said Deer; and if no Distress can be found and taken, that then you certify the same forthwith to me. Given under my Hand and Seal, &c.

The like Warrant *mutatis mutandis*, for assisting and aiding, &c.

Commitment for want of Distress.

To the Constable of, &c. and to the Keeper of the Gaol of S. &c. and to the Chief Officers of the Town of L. in the County aforesaid, for the Time being.

Suffex, to wit, **W** Hereas you the said Constable, &c. were ^{3 & 4 W.} lately required by Warrant under my Hand ^{5 Geo. 1. c. 15.} and Seal, to levy the Sum of 20 l. by Distress and Sale of the ^{'tis 50 l. against} Goods of J. O. of H. &c. by him forfeited, for an Offence ^{a Keeper of a} which he committed against the Form of the Statute made in ^{Park.} the third and fourth Year of the late K. William and Q. Mary, Entituled, An Act, &c. And whereas I have been certified by you, That you cannot find a sufficient Distress to be taken of the Goods and Chattels of the said J. O. for the Offence aforesaid: These are therefore in his Majesty's Name to require you to apprehend the said J. O. and to convey him safely to the Gaol of the said County, and deliver him to the Keeper thereof,

* 'Tis three
Years against a
Keeper of a
Park.

† By 5 G. 1. c.
14. 'tis two
Hours against
a Keeper of a
Park.

thereof, together with this my Warrant for your so doing: Requiring also you the aforesaid Keeper to take into your Custody the said J. O. and him safely to keep for the Space of one whole Year next ensuing, and that then you deliver him to the chief Officer of L. being the Town next adjoining to the Place where the Offence was committed, or some of the Under-Officers, together with this Precept, who are required to set the said J. O. in the Pillory in the said Town on some Market-Day, for the Space of one † Hour: And hereof fail not, as you will severally answer the contrary at your respective Perils. Given under my Hand and Seal, &c.

An Indictment for hunting and taking Deer.

Middlesex, **T**HE Jurors, &c. That J. O. of H. in the to wit, said County, Yeoman, with divers other Malefactors, and Disturbers of the Peace of our Sovereign Lord the King, unknown, being assembled together with him, on the 27th Day of June in the fifth Year of the Reign, &c. about Twelve of the Clock in the Night of the same Day, with Force and Arms, that is to say, with Staffs, Swords, Daggers and Knives, and other Arms did break and enter the Close, and Park of one J. S. Esq; at B. in the said County, and with two Greyhounds did hunt the Deer of him the said J. S. then and there grazing, and lying down in the said Park, and with a Net called a Buckstall, which the said J. O. then had in the said Park, and with the said Greyhounds did then and there take, kill, and carry away two Deer, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, to the great Damage of him the said J. S. and contrary to the Form of the Statute in such Case made and provided.

A Warrant against one who hath killed or wounded, and taken away a Deer.

To the Constable, &c.

Suffex, to **W** Hereas Complaint hath been made unto me, to wit, That J. O. of, &c. did lately, unlawfully kill and wound several Deer in the Park of, &c. There are therefore to charge you forthwith, upon Sight hereof, to apprehend the said J. O. and to bring him before me, or some other of his Majesty's Justices of the Peace for the County, to answer the Premises, &c.

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A Warrant to levy the thirty Pounds for killing or wounding Deer.

To the Constable of, &c.

Suffex, to **W** Hereas J. O. of, &c. hath been duly convicted ^{3 & 4 W. & M.} ^{One Witness,} ^{one Justice.}
wit, before me upon Oath, That he did unlawfully wound, kill and take away one Fallow Deer in and from the Park of Sir T. B. Baronet, on the 30th Day of March last past, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited the Sum of 30 l. These are therefore to require you, or some one of you, forthwith to levy the said 30 l. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said J. O. and that you pay and dispose one third Part thereof to R. H. who informed me of the said Offence; and that you distribute another third Part thereof to and amongst the Poor of the Parish of L. where the said Offence was committed; and that you pay the other third Part to the aforesaid Sir T. B. being the Owner of the said Deer; and if it shall happen that the said J. O. shall not have any Goods or Chattels within your Parish sufficient to satisfy the said Forfeiture of 30 l. that then you certify me thereof, that such farther Order may be taken therein, as is pursuant to the said Statute. And hereof fail not, &c.

A *Mittimus* for Want of Distress, viz. To remain in Gaol for a Year without Bail, and at the End of the Year to stand in the Pillory for an Hour. Which see *antea*, and the Penalty increased against a Keeper of a Park.

The like Warrant *mutatis mutandis*, to levy 30 l. for taking in Toils; and the like Commitment for want of Distress; or against Aiding, Assisting, &c.

A Warrant against a Keeper of a Park, to levy 50 l. on him for killing a Deer.

To the Constable of, &c.

W Hereas J. O. being a Keeper or Officer of the Park of ^{5 G. c. 15.}
 W. R. of, &c. in the County of W. Esq; in which Park Red and Fallow Deer are usually kept, was on the 12th Day of July last past duly convicted for * killing one Fallow * Or taking a-
 Deer in the said Park, without the Consent of the Owner of way, or being
 the said Deer, or the Officer in chief intrusted with the Care aiding or as-
 of the said Park, contrary to the Statute in that Case made sisting, as the
 and Case is.

Deer-stealing.

and provided, by Reason whereof he hath forfeited 50 l. These are therefore to command you in his Majesty's Name forthwith to levy the said Sum of 50 l. &c. as in the former Warrant, and so to be distributed.

A Warrant to levy 30 l. for pulling down the Pales of a Park.

To the Constable of, &c.

5 Geo. 1. c. 15.
One Witness,
or his own
Confession.
† Or caused
to be pulled
down any Pale
or Wall.

‡ To be distributed as by the
Stat. 3 & 4 W.

W Hereas J. O. of, &c. on the Day of the Date hereof, hath been duly convicted before me, that he on the 12th Day of July last past did † pull down three Pales of the Park of W. R. of, &c. in which Park Red and Fallow Deer are usually kept; and that the said J. O. committed the said Offence, contrary to the Statute in that Case made and provided, and without the Consent of the Owner, or any other Person intrusted in chief with the Keeping of the said Park; by Reason whereof he hath forfeited ‡ 30 l. These are therefore, &c.

A Warrant to enter the House of a suspected Person, and search for Venison, &c.

To the Constable, &c.

3 & 4 W. & M.
c. 11.

Suffex, to wit, **W** Hereas Complaint hath been made unto me by, &c. That several Fallow Deer have been lately unlawfully coursed, hunted, killed, wounded, and taken in Toils by Persons unknown, in the Park of Sir T. B. Baronet in the said County, and have been carried out of the same; and I being informed, That Venison and Deer-Skins have been lately seen in your Parish: These are therefore to require you, upon Sight hereof, forthwith to enter into and search the Houses, Outhouses, Yards, and other Places in your said Parish, of such Person or Persons whom you shall justly suspect or be informed to have any Venison or Skins of Deer; and if you shall find any such, that then you apprehend the Persons so suspected to have unlawfully come by the same, or in whose House or Places any such Venison or Skins of Deer shall be found, and bring them before me, or some other Justice of the Peace for this County, to be proceeded against according to Law. And hereof fail not. Given, &c.

A Warrant

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A Warrant to levy the 30 l. for not giving an Account how he came by such Venison or Skins.

To the Constable, &c.

Suffex, to **W** Hereas J. O. of L. hath this present Day
 wit, been duly convicted before me by not giving a
 good Account to me how he came by certain Pieces of Venison,
 which upon Search was found in his House, in the Parish of
 H. &c. and not being able to produce the Party of whom he
 bought the same, or some credible Witness to make Oath of the
 Sale thereof to him; so that he hath forfeited the Sum of 30 l.
 according to the Form of the Statute in that Case made and
 provided: These are therefore to require you forthwith to levy
 the said 30 l. so forfeited, as aforesaid, by Distress and Sale of
 the Goods and Chattels of the said J. O. and that you pay one
 third Part thereof, ut prius.

Mittimus for Want of Distress.

To the Constable of, &c. and to the Keeper of his Majesty's
 Gaol of H. in the County aforesaid.

Suffex, to **W** Hereas you the said Constables were by my
 wit, Warrant charged to levy 30 l. on the Goods
 and Chattels of J. O. by Distress and Sale thereof, the said
 Sum being forfeited by him for not giving me a good Account
 (as in the former Warrant): And whereas you have returned
 unto me, that the said J. O. hath not sufficient Distress whereby
 the said Forfeiture may be levied: These are therefore to re-
 quire you to apprehend the said J. O. and to convey him to the
 common Gaol at H. in the said County, and to deliver him to the
 Keeper thereof: And I do hereby command you the said
 Keeper, to take the said J. O. into your Custody, and to keep
 him safely in the Gaol without Bail for the Space of * twelve
 Months next ensuing, and at the End thereof to deliver him to
 the Chief Magistrate of the Town of L. who is to set the said
 J. O. in the Pillory in the said Town on some Market-day,
 there to stand for the Space of one † Hour. And hereof fail
 not, &c.

3 & 4 W. & M.
 c. 10.

5 Geo. 1. c. 15.

A Keeper of a
 Park forfeits

50 l. for killing
 or taking a

Red or Fallow
 Deer, to be le-

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* By 5 Geo. 1.
 c. 15. 'Tis

three Years

without Bail,
 and to be set in

the Pillory.
 † Two Hours

against a Keeper of a Park for killing or taking a Red or Fallow Deer.

Notes

Deer-stealing.

Note; If the Offender doth not pay the 30 £. upon his Conviction, the Constable may keep him in Custody, not exceeding two Days, in which Time he may know whether any Distress is to be taken; and this is to prevent his Running away, or Removing his Goods.

Note; Before any *Certiorari* shall be allowed, the Offender must give Bond to the Prosecutor to pay full Costs within a Month after Conviction confirmed, or a *Procedendo* allowed: These Costs are to be ascertained on Oath.

Noverrint Universi, &c. Nos, &c. There must be two Sureties, such as the Justice shall approve.

The Condition of the said Bond.

3 & 4 W.

THE Condition of this Obligation is such, That whereas the above bounden J. O. was lately convicted before H. P. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, at the Prosecution of R. H. above-named, for that he the said J. O. had several Pieces of Venison and Deer-Skins found in his House in H. &c. and not being able to give Account how he came by the same, in such Manner as is required by a Statute in that Case made and provided: And whereas the said J. O. hath obtained a Writ of *Certiorari* to remove the said Conviction, and the Proceedings thereon, into his Majesty's Court of King's Bench at Westminster: If therefore the said J. O. shall pay or cause to be paid unto the said R. H. his full Costs to be ascertained upon the Oath of the said R. H. which he shall sustain in any wise concerning the Prosecution of the said Conviction, within one Month after the same shall be confirmed, or a Writ of *Procedendo* shall be allowed thereon by the Court; that then this Obligation shall be void.

He must likewise at the same Time give another Bond to the Justice before whom the Conviction was made, in the Penalty of Sixty Pounds, with Sureties.

The Condition of the Bond.

5 Geo. c. 15.

To wit, **W**Hereas the above bounden J. O. was duly convicted before the above-named H. P. Esq; one of his Majesty's Justices of the Peace for the County of S. for killing a Deer in the Park of G. B. at R. in the said County; and he the said J. O. hath procured a Writ of *Certiorari* to remove the said Conviction and Proceedings thereon, into the Court of King's Bench at Westminster; now the Condition of this Obligation is such, that if the said J. O. shall prosecute

prosecute the said Writ of Certiorari with Effect, and shall pay or cause to be paid unto the above-named H. P. his Heirs, Executors or Administrators, all the Forfeitures due upon the said Conviction, within one Month after the same shall be confirmed, or on a Procedendo allowed, or otherwise shall then render the said J. O. unto the above-named H. P. without any further Delay; then this Obligation shall be void.

And before he is discharged, he must likewise give another Bond of 50*l.* but without Sureties to him to whom the Offence was done.

The Condition is as followeth.

W Hereas the above-bounden J. O. hath been duly convicted for killing a Deer in the Park of T. P. Esq; contrary to the Statute in that Case made and provided; now the Condition of this Obligation is such, that if the said J. O. shall from Time to Time, and at all Times hereafter, be of the Good Behaviour; and if he shall not offend in like Manner; then this Obligation shall be void. 5 Geo. I. c. 15.

And now by another Statute 'tis enacted, that if any Person enter into a Park after 1 May 1719. or into any Ground inclosed, where Deer are usually kept, and wilfully shall kill or wound any Red or Fallow Deer, without the Consent of the Owner, or the Person intrusted with the Care of the Place; or being aiding or assisting in committing such Offence, and shall be convicted thereof, upon an Indictment at the Assizes, he shall be sent to some Plantation in America for seven Years, and shall be transferred 'by the Court to any Person who will contract for the Performance of his Transportation. 5 Geo. I. c. 23.

But this Act doth not repeal any former Law made against Deer-stealing, only if such an Offender is transported, he shall not be prosecuted upon any of those Laws.

A *Mittimus* for the pulling down and destroying Pales in the Night-time.

To the Constable, &c. and to the Keeper of the common Gaol, &c.

3 & 4 W. & M.
Three Months
Imprisonment
without Bail.
By 5 Geo. 1. c.
15. shall like-
wise forfeit as
if he had kil-
led one Deer.

Sussex; to wit, **W**Hereas Complaint hath been made unto me, That J. O. of your Parish, &c. did on the second Day of May last past, in the Night-time of the said Day pull down and destroy several Pales of the Park of Sir T. B. Bart. in the County aforesaid, contrary to the Statute in that Case made and provided: And whereas the said J. O. hath been duly convicted before me this present Day upon Oath, for the said Offence: These are therefore to charge and command you to apprehend the said J. O. and to convey him to the Gaol aforesaid, and to deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keeper to take him into your Custody, and him safely to keep in the said Gaol for the Space of three Months without Bail. Given under my Hand, &c.

A Warrant for a Buck.

UPON Sight hereof you are to kill and deliver to J. S. Esq; one fat Buck of this Season; for which this shall be your Warrant.

A. B.

Note; By 9 Geo. 1. c. 22. Persons in Disguise stealing or killing Deer shall be deemed Felons, and not have the Benefit of Clergy; continued by 12 Geo. 1. c. 30. and by 6 Geo. 2. c. 37. further continued to 1 Sept. 1736. and to the End of the then next Sessions of Parliament.

Deodand. See Casual Death in Homicide.

Dissenters, and Divine Service.

BEfore I mention any Thing under this Title, relating to the Office of a Justice of Peace, I think it may not be improper to give a short Account of the Rise and Continuance of the Divisions amongst us, viz.

Some certain Ceremonies, which had been used in Times of Popery, were thought fit to be continued by our Reformers, as useful to beget some Reverence in Holy Exercises, but chiefly in Hopes to bring those of the *Roman* Communion more easily to comply with that Reformation.

There were some Divines in the Beginning of the Reign of Queen *Elizabeth*, who fled from Persecution in the Reign of Queen *Mary*, and having by that Means seen the Methods and Usage of Foreign Churches, particularly that of *Geneva*, complained of this as a Compliance with Popery; and therefore, since we had reformed from the Errors of that Church, would have none of their Ceremonies continued in ours.

The Queen was persuaded by some Persons in Power, then at Court, to take the Revenues of the Bishopricks and Cathedrals into her own Hands, which would not only enrich the Crown, but it would likewise be an Expedient to unite all the reformed Churches, and to bring the *English* Church to the Model of that of *Geneva*.

This was opposed by some wise Ministers at that Time; who told the Queen, That if Matters of Religion came to be thus regulated here by popular Persons, they would quickly set up a Power distinct from hers in Church Matters, which by Consequence would intrench upon her Prerogative.

This seemed so reasonable to her, that she resolved to maintain the antient Government in the Church, and continued their Ceremonies; which the other Party did not dislike as unlawful, but for the Reasons aforesaid.

And now these Differences, which were small in the Beginning, became fixed and settled into Factions, and those who were against the Ceremonies, reproached the Churchmen with *Non-residence*, *Pluralities*, and many Abuses in the Spiritual Courts; and thus Matters stood for many Years in her Reign.

Afterwards Lectures were set up in most Cities and Market-Towns: I will not examine whether this was done purely in Opposition to the Church, or whether it was upon any Dislike of the mean Performances of those Persons who served the Cure in those Places; it may be the latter.

For in antient Times, the settled Allowances for the Secular Clergy in great Towns, &c. was very small, because the Perquisites were considerable by Oblations and otherwise; and even in the later Ages of Popery, the Churchmen of those Places lived plentifully, though their Stipends were small; for the Superstition of the Times provided Fees for them by *Obits*, *Exequies*, and *Masses*, and they were obliged to live singly.

But these Things being disused after the Reformation, and the Allowances of the Clergy in great Cities and Towns being still very small, might be Occasion for the richer Sort of

Dissenters, and Divine Service.

People in these Places to maintain Men of greater Abilities than the Incumbents, by a voluntary Contribution.

These Men by their Zeal in Preaching, gained a Party to themselves; who depending upon the Bounty of the People, were generally inclined to submit to the Humours of the chief Contributors; and by this Means the Division was still increased.

In the succeeding Reigns, the People were not only settled into Parties, but were distinguished by Names, *viz.* The *Court* and *Country* Parties.

The Clergy stood firm to the Interests of the Court; and those who opposed that Interest in Civil Affairs, always cherished the other Party, commending them for good Protestants; and that it was the Interest of all Parties to unite.

But instead of that the Breach was made wider by the Civil Wars, and both then and afterwards some designing Persons have, by sly Insinuations and other Methods, laboured to make both Parties Tools by Turns, to break in upon and crush one another, that they might make a Way for the common Enemies to enter.

But the Nation being come to a better Temper, a Law was made, *Anno 1 Guil. &c.* That neither the Statutes of 1 *Eliz. c. 2.* 23 *Eliz. c. 1.* nor 3 *Jac. c. 4.* (which I shall mention more particularly hereafter) shall extend to Persons dissenting from the Church.

They must likewise subscribe the Declaration mentioned in the Statute of 30 *Car. 2. st. 2. c. 1.*

1 W. & M. f. 1.
c. 18. f. 2.

Sec. 4.

These Oaths and Subscriptions the Justices in Sessions have Power to administer and take; and those who do take the Oaths must pay 6*d.* for registering, and 6*d.* for a Certificate.

They shall not be liable to the Penalties of 35 *Eliz.* and 22 *Car. 2.* nor be prosecuted in any Ecclesiastical Court for Nonconformity.

Sec. 5.
Sec. 19.

But they must not assemble in Places with Doors locked, barred or bolted, nor until the Place is certified to the Bishop of the Diocese, or to the Archdeacon, or to the Justices at Quarter-Sessions, and registred there, and they have a Certificate thereof.

Sec. 7.

If chosen to any Parish-Office, they may execute it by Deputy.

Sec. 8.

Then as to their Preachers, if they take the Oaths, and subscribe the Declaration at the Quarter-Sessions where they live, they shall not be liable to the Penalties in the Statute of 17 *Car. 2. c. 2.* which is not to come within five Miles of any Town that sends Burgesses to Parliament, if he hath not declared his Assent and Consent to the Book of *Common Prayer*, &c. under the Penalty of 40*l.* nor to the Penalties in 22 *Car. 2. c. 1.* which is, being convicted of Preaching at a

Con-

Conventicle, he forfeits 10 *l.* nor to the Penalty of 100 *l.* mentioned in 13 & 14 *Car.* 2.

But then these Preachers must declare their Approbation, Sect. 3. and subscribe the Articles of Religion, except these Words in the 20th Article, *viz.* the Church hath Power to decree Rites and Ceremonies, and Authority in Matters of Faith, and except the 34th Article; which is, that the Church hath Power to appoint Rites and Ceremonies which are not contrary to the Word of God, and that private Persons are bound to conform to such Ceremonies: And except the 25th Article, which concerns the Reading Homilies in Churches: And the 36th Article, which relates to the Consecration of Bishops, &c.

Preachers thus subscribing, &c. shall not serve on Juries, Sect. 11. and shall be exempt from Parish-Offices.

And if any Person disturb them in Preaching, he shall find Disturbing Sureties to be bound with himself in a Recognizance of 50 *l.* 1 preachers. to appear at the Sessions; and being convicted there, shall Sect. 18. forfeit 20 *l.* to the King.

If he will not find Sureties, he shall be committed to Pri- Sect. 18. son till next Sessions.

The Proof must be by two Witnesses on Oath before one Sect. 18. Justice.

There is a Clause in this Act, which concerns the Preachers Anabaptists. in *Anabaptists* Congregations, *viz.* That if they subscribe the Sect. 10. Articles of Religion, excepting in that Part of the 27th Article, which relates to Infant Baptism, and shall take the Oaths and make and subscribe the Declaration, that they shall enjoy the same Advantages which Dissenting Ministers have by that Law.

Any Justice of Peace may require a Dissenter to make and Quakers. subscribe the said Declaration, and to take the aforesaid Oaths; Sect. 13. but because there are some Persons who scruple to take any And 7 & 8 W. 1. Oath, therefore Provision is made to exempt them from the 3. c. 34. Penalties aforesaid, if they make and subscribe the said Declaration, and likewise the Declaration of Fidelity; (which see in Title Oaths.)

They must likewise subscribe a Profession of their Christian 1 W. & M. c. Belief, in these Words: 18. c. 13.

I A. B. profess Faith in God the Father; and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, our God blessed for evermore: And I do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.

These Declarations and Subscriptions must be recorded at the Quarter-Sessions.

Sect. 14.

And if any Person refuse this Oath when tender'd, he shall not be admitted to make and subscribe the Declarations, tho' required by a Justice of Peace at the Sessions, if he cannot, within thirty-one Days after such Tender, produce two Protestant Witnesses to testify on Oath, that they believe him to be a Protestant Dissenter, or produce a Certificate under the Hands of four Protestants conformable to the Church, or who have taken the Oaths, &c. and he must likewise have a Certificate under the Hands and Seals of six or more of the Congregation to which he belongs, owning him to be one of them.

Sect. 15.

And until such Witnesses and Certificate are produced, the Justice may take a Recognizance, with two Sureties of 50 *l.* for producing the same, or otherwise he shall be committed till that Time.

Sect. 16.

But by this Act 'tis declared, That all the Laws made for frequenting Divine Service on the Lord's Day, are in Force against all Persons, except they come to some Religious Assembly allowed by Law.

Now the Statutes which were made for frequenting the Church, are these, *viz.*

By 1 *Eliz. c. 2.* All Persons above the Age of Sixteen are enjoined to come every *Sunday* and Holiday to their Parish-Church, Chapel, or to some Place where Common Prayer is used, and to abide there soberly during the Time of Service, or shall forfeit 12 *d.* for every Offence, to be levied by the Church-wardens for the Use of the Poor of the Parish, and may be punished likewise by the Censures of the Church, having no reasonable Excuse to absent.

23 *El. c. 1. f. 1.*

About twenty-three Years afterwards, another Statute was made, by which it was enacted, That every Person not coming to Church, as enjoined by the Stat. 1 *Eliz.* and being thereof *lawfully convicted*, should forfeit 20 *l. per Month*; and if they did forbear for a Year, after a Certificate thereof made by the Ordinary in *B. R.* then one Justice of the Peace of the County where they dwelt might bind them with two Sureties in 200 *l.* at the least, to be of the Good Behaviour; which Recognizance is not to be discharged till they come to Church.

Sect. 17.

The Forfeiture was to be divided between the King, Poor and Prosecutor; and if not able, or not paid within three Months after Conviction, must be committed till they conform, or pay it.

Sect. 8.

The Prosecution upon these Acts, is to be within a Year and a Day after the Offence, and before the Justices in Sessions.

Sect. 10.

But Conformity before Judgment, either before the Bishop of the Diocese, or in Sessions, discharges the Penalties.

Informa-

Information for 20 *l.* a Month against a Papist not coming to Church, *contra formam Statuti in hujusmodi casu Editi & provis*; objected, that it ought to be *contra formam Statutorum*, for 'tis against several Statutes 1 & 13 *Eliz.* but not allowed, for tho' the 1 *Eliz.* enacts, that all shall come to Church, yet the 23 *Eliz.* only gives the 20 *l.* a Month. 3 *Lev.* 61. *Parker and Webb.*

It was a Question, whether a Man might be prosecuted in the Spiritual Courts, for not coming to his own *Parish Church*; for since the Division into Parishes was by the Common Law, if the Consequence thereof brought the People under a new Obligation to resort to their proper Parish Churches, it ought to be examined and tried at Common Law; that the Statutes, which require Men to come to Church, have been usually looked on as sufficiently complied withal, if a Man went to any other Parish Church; but it was agreed that an entire Neglect is punishable in the Spiritual Court.

Several Persons were indicted upon the Statute of 23 *Eliz.* 4 *Leon.* 54. and were outlawed upon it, and moved the Court to be discharged upon Submission and Conformity; but it was denied until the Outlawry should be reversed, or they pardoned.

Those who would see a Precedent for an Action of Debt; *Lutw.* 201. brought on this Statute may find it in 1 *Lut.* 201.

About six Years afterwards it was enacted, That the Conviction should be at *B. R.* or at the Assizes, and that all Grants with Powers of Revocation should be void against the Queen, so as not to deprive her to levy the said Forfeiture of 20 *l.* per Month. 29 *El.* c. 6. f. 2.

And after such Conviction, the Offender shall in every *Sec.* 4. *Easter* and *Michaelmas* Term pay into the *Exchequer* after the Rate of 20 *l.* per Month, without any other Conviction; which if he neglects to do, then a Process was to issue out of that Court to seize all his Goods, and two Thirds of all his Lands and Leases, for so long Time as he shall forbear coming to Church.

Note, That by the Statute of 23 *Eliz.* the Informer is to have a third Part of the Forfeiture; but if the Defendant is convicted by Indictment upon the Statute of 29 *Eliz.* before an Information brought, then the Queen is to have the Penalty; and therefore such a Conviction is a good Plea in Bar to any Information afterwards brought. *Noy* 117. *Lane* 60. *Lut.* 208.

By the Statute of 3 *Jac.* c. 4. one Justice of the Division, where a Person liveth not coming to Church, may, upon Proof of his Default by one Witness on Oath, send for the Offender; and if he cannot give a satisfactory Excuse, the Justice may send a Warrant to the Church-wardens of the Parish to levy the 12 *d.* for every Offence; and if no Distress can be taken, may then commit him till paid. 3 *Jac.* 1. c. 4. f. 27.

Sect. 32.

Retaining a Servant absenting, &c. for a Month, the Master forfeits 10 *l.* per Month.

In *Michaelmas* Term 12 *Jac.* Dr. *Foster* was prosecuted upon the aforesaid Act of 23 *Eliz.* by Information in *B. R.* *tam quam*, &c. (that is, as well for the King as for himself, to wit, the Informer) for the 20 *l.* per Month; and it was objected, That he ought to be convicted upon a former Prosecution before this Information could be brought; because he is not to incur the Penalty of 20 *l.* till he is lawfully convicted: which are the express Words of the Statute.

But it was resolved, That he might be convicted of this Penalty by the very Information then brought, and that it was not necessary to shew a former Conviction, for till that Time nothing is forfeited.

Then it was objected, that the 20 *l.* was given to the Queen by two subsequent Statutes, so that the Informer could have nothing.

But it was resolved, That the Statute of 28 *Eliz.* did not take away the Benefit which Informers had by the Statute of 23 *Eliz.* because it extended only to Indictments, and left Informations as they were before; and as to the 35th of *Eliz.* that Statute gave the Queen as large a Remedy as the former; for before that Statute she had no Remedy but by Indictment; which was defective in this Case, because if a *Feme Covert* had been convicted, the Queen could not have levied the Penalty on her Husband, for he was no Party to the Suit: Now that Statute gave her an Action of Debt for it, in which the Husband might be joined, and answer for the Non conformity of his Wife.

Broughton and
Moor, Cro. Jac.
142. Cro. El.
750.

An Information was brought for not coming to Church for such a Time, and concluded, *contra formam Statuti* (against the Form of the Statute); but because there are three Statutes concerning this Matter, and it is uncertain to which it doth refer, therefore it was discharged; but it is now held, That *contra formam Statuti* (against the Form of the Statute) is well enough.

3 Lev. 61.

10 A. c. 2.

Note; By 10 *A. c.* 2. Persons in *England*, &c. having any Office Civil or Military, or receiving any Pay, Salary, &c. under the Queen, or by her Authority, or in the Navy, &c. or Employment in the Household, &c. or any Mayor, Alderman, Recorder, Bailiff, Town-Clerk, Common Council-Man, or others bearing any Office of Magistracy or Place of Trust relating to the Government of any Cities, Corporations, &c. who by 13 *Car.* 2. & 25 *Car.* 2. are obliged to receive the Sacrament, &c. that shall after Admission into such Office, Employment, &c. be present at any Conventicle, &c. where ten Persons, besides those of the Household, or ten where no Household, are assembled, &c. altho' the Liturgy be there used, where the King shall not be prayed for according to the

the Liturgy (except where such Offices are allowed to be used, wherein are no Directions to pray for the King), shall on Conviction forfeit 40 *l.* and be disabled to hold such Office, or any other whatsoever.

But tho' so convicted, &c. yet if afterwards he conform for one Year, and receive the Sacrament three Times in that Year, he shall then be capable of any of the said Offices, &c.

And being so convicted, &c. and afterwards so conforming, he shall the next Term after his Admission into any such Office, &c. make Oath in Writing in some of the Courts at *Westminster*, or at the next Quarter-Sessions, That he hath conformed for one Year before such Admission, without being present at any Conventicle, &c. and received the Sacrament three Times accordingly; which Oath shall be there enrolled and kept on Record.

None to be punished by this Act, unless Oath be made of the Offence before a Judge, Justice, &c. within ten Days after the Offence, and Prosecution within three Months; nor any Conviction to be but on Oath of two Witnesses; nor shall any Office of Inheritance be made void, so as a sufficient Deputy be appointed till the Persons conform.

Also the Toleration Act of 1 *W. & M.* is hereby confirm'd; Sect. 7, 3. and if any Dissenter (not in Orders) entitled to the Benefit of that Act; shall be prosecuted on any Penal Statute, from which Protestant Dissenters are exempted, if he shall take and subscribe the Oaths and Declaration; or being a Quaker, the said Declaration, and the Declaration of Fidelity, and also the Christian Belief, before two Justices, (to be returned to the Quarter-Sessions to be there recorded), he shall be entitled to the Benefit of this Act, as fully as if qualified within the Time prescribed.

And any Dissenting Preacher duly qualified, may officiate Sect. 9. in any Congregation duly certified and recorded, tho' the same be not in the County wherein he was qualified: But shall, if required by a Justice, &c. produce a Certificate of his having qualified himself, and also subscribe the Declaration before such Justice, if thereto required.

And in *Scotland*, all Advocates, Writers to the Signet, Notaries Publick, and Ministers of the College of Justice there, shall take and subscribe the Oath appointed by 6 *Annæ*, c. 14. except such as have already taken the same, and on Neglect or Refusal, be *ipso facto* incapable to enjoy such Employment, or to practise in Time coming. And no Person shall be admitted to the Office of Advocate, Writer, &c. till he hath taken and subscribed the said Oath. And for other Matters touching Divine Service, &c. in *Scotland*, see 10 *Annæ*, c. 7.

But the Stat. 12 *Annæ*, Sess. 2. c. 7. for preventing the Growth of Schism, &c. doth not belong to this Treatise; for

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no Authority is thereby given to Justices of the Peace; however both the last mentioned Statutes are now repealed by

5 Geo. 1. c. 4. 5 Geo. c. 4.
f. 2.

And if any Magistrate shall be at any publick Meeting for Religious Worship, other than the Church of *England*, in the peculiar Habit, or attended with the Ensigns of his Office, and shall thereof be convicted by due Course of Law, he shall be disabled to hold such Office, and be incapable to bear any publick Office whatsoever in *England*.

The Precedents upon the Statute of 1 *Will.* are as follows.

The Form of the Certificate by four Protestants, conformable within 31 Days after the Tender, &c.

WE whose Names are hereunto subscribed, being all conformable to the Church of *England*, do hereby certify whom it may concern, that we do verily believe that J. O. of, &c. is a Protestant Dissenter. Given under our Hands, &c.

The Form of a Certificate by four Protestants not conformable, &c.

WE whose Names are hereunto subscribed, having all taken the Oaths, and subscribed the Declaration enjoined by the Statute made in the first Year of the Reign of the late King William and Queen Mary, Entitled An Act for exempting their Majesties Protestant Subjects dissenting from the Church of *England*, from the Penalties of certain Laws, do hereby certify, That we do verily believe J. O. of, &c. is a Protestant Dissenter. Given under our Hands, &c.

The Form of a Certificate from six of the Congregation.

WE whose Names are hereunto subscribed, being Members of the Congregation of, &c. do hereby certify whom it may concern, That we do own J. O. of, &c. to be one of our said Congregation. Given under our Hands and Seals, &c.

A Recog-

A Recognizance with two Sureties, &c.

Suffex, to **B**E it remembred, That on the eleventh Day of
 wit, June, &c. came before me R. B. Esq; one of
 the Justices of our said Lord the King, assigned to keep the
 Peace in the County aforesaid, J. O. of, &c. T. P. of, &c.
 and T. B. of, &c. and acknowledged themselves to stand in-
 debted to our said Lord the King, to wit, every of the said
 Bail in 50l. of good and lawful Money of this Realm, to be
 made and levied of their Goods and Chattels, Lands and Te-
 nements, to the Use of our said Lord the King, his Heirs and
 Successors, if the said J. O. shall make Default of the Condi-
 tion within written.

THE Condition of this Recognizance is such, That
 whereas the Oaths injoined to be taken by an Act
 made in the first Year of the Reign of the late King William
 and Queen Mary, entituled, *An Act*, &c. were, on the first
 Day of August last past, tendred to the above bounden J. O.
 by the aforesaid R. B. which he the said J. O. did then re-
 fuse to take; And whereas also he was on the third Day of
 the said Month of August required by the said R. B. to
 make and subscribe the Declarations injoined likewise by the
 said Act: Now if the said J. O. shall, within thirty-one
 Days after such Tender of the said Declarations as aforesaid,
 produce * a Certificate under the Hands of four Protestants,
 who are conformable to the Church of England, or of four
 others who have taken the Oaths, and subscribed the Decla-
 ration in the said Act mentioned, attesting him the said J. O.
 to be a Protestant Dissenter; and shall likewise produce with-
 in the Time aforesaid, another Certificate under the Hands
 and Seals of six or more sufficient Men of the Congregation to
 which he the said J. O. doth belong, owning him thereby
 to be one of them; that then this Recognizance shall be
 void, &c.

* If he can pro-
 duce two Pro-
 testant Wit-
 nesses, who will
 make Oath
 that they be-
 lieve him to be
 a Protestant
 Dissenter, then
 there is no Oc-
 cation of these
 Certificates.

Commitment where the Party cannot
give such Security.

To the Constable, &c. and to the Keeper of the Gaol for
 the said County.

Suffex, to **W**Hereas J. O. of H. in the County aforesaid,
 wit, Yeoman, hath refused to take the Oaths, en-
 joined by an Act, Entituled, *An Act for exempting their Ma-
 jesties*

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jesties Subjects, &c. being lawfully tendered to him on the first Day of August last past: And whereas the said J. O. hath since been required by R. B. one of his Majesty's Justices of the Peace for the said County, on the fifth Day of August last past, to make and subscribe the Declaration mentioned and enjoined by the said Act; but before the said J. O. is to be admitted to the same, he is within thirty-one Days after such Tender of the Declarations, to produce two sufficient Protestants to testify upon Oath, That they believe him to be a Protestant Dissenter, or a Certificate, &c. ut prius. And whereas the said J. O. hath not within the Time aforesaid, produced such Certificate as aforesaid, or two Witnesses to attest his being a Protestant Dissenter, and hath not entred into a Recognizance with two Sureties, in the Penal Sum of 50 l. &c. for his producing the same: These are therefore to command you to apprehend the said J. O. and him safely to convey to the Goal aforesaid, and to deliver him to the Keeper thereof, together with this Precept: Commanding also you the said Keeper to receive the said J. O. into your Custody, and him safely to keep, until he has produced such Certificate, or two Witnesses as aforesaid. Given under my Hand and Seal the tenth Day of September, &c.

A Certificate from the Clerk of the Peace for one who produceth Witnesses or Certificates according to the aforesaid Act, for which he is to take 6 d. and no more.

Suffex, to **T**Hese are to certify whom it may concern, wit, That J. O. of, &c. appeared before his Majesty's Justices of the Peace at the General Quarter-Sessions of the Peace held for the said County at L. on the seventh Day of, &c. and declared that he was a Dissenter from the Church of England, and scrupled to take any Oath, but desired to be admitted to make and subscribe the Declaration mentioned in a Statute made in the 30th Year of the Reign of the late King Charles the Second, Entituled, An Act to prevent Papists from sitting in either House of Parliament; and likewise to make and subscribe the Declaration of Fidelity and Profession of his Christian Belief in the Form enjoined by one other Act made in the first Year of the Reign of the late King William and Queen Mary, Entituled, An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws, &c. and did then and there give full Satisfaction to the Court, That he

was

was not a Papist; and * produced a Certificate under the Hands of four Protestants, which the said J. O. made appear to the said Court to be † conformable to the Church of England; who did certify, That they believed him to be a Protestant Dissenter; and did also produce another Certificate under the Hands and Seals of six sufficient Men of the Congregation of, &c. to which the said J. O. belongs; be the said J. O. was admitted at the said Sessions to make and subscribe the aforesaid Declaration and Profession of his Christian Belief; and did make and subscribe the same accordingly, which are there entered on Record. Signed and dated the Day of Nov. in the Year of our Lord 1701.

* Or two Protestant Witnesses upon Oath.

† If Dissenters, then he must make it appear that they have taken the Oaths, &c.

A Warrant to bring an Offender in not coming to Church before the Justices.

To the Constable of, &c.

Sussex, to **W** Hereas I have been informed upon Oath, wit, That T. P. of, &c. did not upon Sunday last past repair to any Church, Chapel, or other usual Place appointed for Common Prayer, and there hear Divine Service, according to the Statutes in that Case made and provided: These are therefore to require you to bring the said T. P. before me, or some other Justice of the Peace for this County, to answer the Premises: And hereof fail not. Given under my Hand and Seal, &c.

A Warrant to levy the Penalty of Twelve Pence for not coming to Church.

To the Church-wardens of the Parish of H. in the County of Sussex, or either of them.

Sussex, to **W** Hereas I have been informed, That T. P. wit, of, &c. did not upon Sunday the 17th Day of August last past, nor upon the Sunday next following, nor upon the Sunday next after that, repair to any Church, Chapel, or other usual Place appointed for Common Prayer, and there hear Divine Service, according to the Statutes in that Case made and provided; and the said T. P. being brought before me, did not make a sufficient Excuse and due Proof thereof, so as to satisfy me why he absented himself as aforesaid: These are therefore to require you, or one of you, to levy 3s. upon the Goods of the said T. P. by Distress and Sale thereof for his three Defaults as aforesaid, and to employ

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ploy it for the Use of the Poor of the said Parish; and if no such Distress can be taken, that you then certify me thereof as soon as may be, that such farther Proceedings may be had therein as to Justice doth appertain.

If no Distress can be taken, then the Party may be committed to Gaol: The Form of the Warrant is as followeth:

To the Constable of, &c. and to the Keeper of the Gaol at, &c.

Suffex, to] **W** Hereas the Church-wardens of, &c. were
writ, lately commanded by my Warrant to levy
3 s. upon the Goods of T. P. of the Parish of, &c. for not repairing to any Church or Chapel, or other usual Place appointed for Common Prayer, and there hear Divine Service on Sunday the seventh Day of August last past (ut prius) according to the Form of the Statute in that Case made and provided; and the said Church-wardens have certified unto me, That the aforesaid T. P. hath not any Goods or Chattels whereon to levy the said Penalties: These are therefore to require you the said Constables to take the aforesaid T. P. and to convey him to the Gaol of the said County, and to deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keeper to receive him into your Custody, and him safely to keep, until he shall pay the said 3 s. And hereof fail not.
Given, &c.

Indictments upon the above-mentioned Statutes.

An Indictment upon the Statute of 1 Eliz.
c. 2. for not coming to Church. Sec
3 Jac. c. 4.

Suffex, to] **T** HE Jurors, &c. That F. O. of H. in the
writ, said County, Yeoman, and E. his Wife, each
of them being of the Age of sixteen Years and upwards, and being Parishioners of the Parish Church of H. aforesaid in the said County of Suffex, within which said Church, the Common Prayer and other Divine Service was said and used on the Sunday next after the Feast of Saint Michael the Archangel in the second Year of the Reign of our Sovereign Lord the now King, and on ten Sundays then next ensuing, and on six Holydays, happening between the said ten Sundays, the said F. O. and E. having no lawful or reasonable Excuse or Hindrance to
be

be absent from the Church aforesaid on the said Days when the Common Prayer, Preaching and Divine Service was there then said, used and ministred, were permitted to come to the Church of H. being their Parish Church accustomed, yet they voluntarily did absent themselves, and each of them did absent him and herself from the Parish Church aforesaid, on the Sunday next after the Feast of Saint Michael the Archangel, in the said second Year of the Reign of our said Sovereign Lord the now King, and on the said ten other Sundays then next following, and the said six other Holidays happening between the said ten Sundays, at the Time of the said Common Prayer, Preaching and Divine Service there used and ministred on the Days aforesaid, against the Peace, and in Contempt of our said Lord the now King, and his Laws, and his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

The Prosecution upon the Act of 1 Eliz. afore-mentioned must be by Way of Indictment at the next General Sessions after the Offence committed.

The Prosecution upon the Statute of 3 Jac. c. 4. must be within a Month after the Offence, and by Warrant from the Justice of the Division where the Offender liveth.

An Indictment upon the Statute of the 23 Eliz. c. 1. for not coming to Church.

Suffex, to **T**HE Jurors, &c. That J. O. of H. in the said County of Suffex, Yeoman, on the 18th Day of August in the eighth Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. was of the Age of sixteen Years and upwards, and from the said 18th Day of August unto the tenth Day of July then next ensuing, that is to say, for the Space of eleven Months did not repair to his Parish Church of H. aforesaid, or to any other Church, Chapel, or usual Place of Common Prayer, but for the whole Time aforesaid did willingly and obstinately * with- * It these
out any reasonable Excuse forbear the same, for the Space of Words had
eleven Months aforesaid, contrary to the Form of the Statute in been omitted.
such Case made and provided, in Contempt of our said Lord the the Indictment
now King, and his Laws, and against the Peace of our said had been ill.
Sovereign Lord the now King, his Crown and Dignity. Judgment 20 l.
per Month, and
if absent a

Year, to lead to good Behaviour, and not discharged, till conform.

After

After another Manner.

23 Eliz. c. 1. Suffex, to **T**HE Jurors, &c. That D. P. of H. in the County aforesaid, Gent. on the twelfth Day of February in the fifth Year of the Reign, &c. was of the Age of sixteen Years and upwards, and did not repair to his Parish Church, or to any other Church, Chapel, or usual Place of Common Prayer and Divine Service at any Time within the Space of one Month next ensuing the twelfth Day of February in the Year above-mentioned, but did willingly and obstinately forbear the same without any reasonable Excuse, contrary to the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Four Persons were indicted upon this Statute, for that neither they, *nec eorum uterque* (nor either of them) came to any Parish Church, &c. It was objected, That the Word *uterque* signified one of them, and not either of them; but it was held to be Surplusage, and not to hurt the Indictment.

The Plea to this Indictment.

AND the said J. O. in his proper Person comes and defends the whole, and whatsoever is above supposed to be done against the Peace, and in Contempt of our said Sovereign Lord the now King, or his Laws, by protesting that the said Indictment exhibited against him is insufficient in Law, whereto there is no Necessity, nor is he bound by the Law of the Land to answer; nevertheless for a Plea the said J. O. further says, that he is not guilty of the said not repairing to any Church, Chapel, or usual Place of Common Prayer, or of his Forbearance thereof, contrary to the Form of the Statute aforesaid specified in the said Indictment, or of any Trespass, Offence or Contempt in the said Indictment above supposed to be done; and of this he puts himself upon his Country, and W. Wheeler Gent. (who prosecutes in this Behalf for our Sovereign Lord the King) does the like. Therefore let a Fury come, &c.

But Offences against this Statute may likewise be prosecuted upon an Information in the Courts at Westminster, and not only in the Counties where they are committed; for they are excepted out of the Statute of 21 *J. a. c. 4.* which limits popular Actions by Informers to be prosecuted within the proper Counties.

An Indictment against a Minister for marrying without a Ring.

Sussex, to **T**HE Jurors, &c. That J. S. of H. in the
 wit, said County, Clerk, being the Minister of the
 Parish Church of H. aforesaid, contriving, and intending to
 raise divers unusual Schisms, Rites and Customs among the
 People of our said Sovereign Lord the King of his Kingdom of
 England, and to lead into Errors very many of his Subjects
 from the Rites of the Church of England, and from the Form
 of the Common Prayer and Divine Service religiously and
 rightly established and used, on the fourth Day of August in
 the fifth Year of the Reign, &c. at H. aforesaid in the said
 County, that is to say, in the Parish Church there, did marry
 and join in lawful Matrimony one T. P. and E. his Wife,
 without any Wedding Ring, at the Time of the Solemnization
 of the Espousals between the said T. P. and E. but the said
 J. S. did then and there solemnize the Espousals between the
 said T. P. and E. although the said J. S. at the Time of the
 Solemnization of the said Espousals did not give any Ring, as
 is accustomed and ought to be done according to the Manner and
 Custom of the Kingdom of England, contrary to the Form of
 the Statutes and Ordinances in such Case made and provided,
 and in Disparagement of the Book of Common Prayer, and
 against the Peace of our said Sovereign Lord the now King,
 his Crown and Dignity.

An Indictment against one for irreverently
 behaving himself at Church.

Sussex, to **T**HE Jurors, &c. That M. V. late of H. in
 wit, the said County, Clerk, being appointed Mini-
 ster, and Curate of the Parish Church of H. aforesaid to say
 the Prayers and administer the Sacrament in the said Church,
 on the fourth Day of August in the fifth Year of the Reign,
 &c. and on divers Days and Times, as well before as after-
 wards did irreverently say the said Prayers, and administer
 the Sacrament in the Church aforesaid not kneeling, but for the
 whole Time of the performing and administering of the same
 did stand upright to the bad Example of other Offenders in such
 like Case, and against the Form and Order of the Book called
 (the Book of Common Prayer), and contrary to the Form of the
 Statute in such Case made and provided, and against the
 Peace of our said Sovereign Lord the now King, his Crown
 and Dignity.

An Indictment for not using the Sign of the Cross in Baptism.

Suffex, to **T**HE Jurors, &c. That E. G. late of L. in
wit, the said County, Clerk, and Rector of the Pa-
 rish Church of St. Anne's in L. in the said County for the Space
 of six Months last past, ought to say the Common Prayer ac-
 cording to the Manner and Order of the Book, called the Book
 of Common Prayer, and also ought within the Time aforesaid
 to administer the Sacrament in the said Church, as mentioned
 and set forth in the Book aforesaid; nevertheless the said E. G.
 at L. aforesaid in the said County for the six Months aforesaid
 did refuse to use and say, nor hath he used the Common Prayer
 in the Parish Church aforesaid, as mentioned in that Book; and
 that the said E. G. at L. aforesaid in the said County on the
 4th Day of August in the 5th Year of the Reign, &c. did ad-
 minister the Sacrament of Baptism in the Church aforesaid to
 a certain Male Infant of one J. O. in another Form than is
 contained in the said Book of Common Prayer, and did not
 make the Sign of the Cross upon the Forehead of the said In-
 fant in administering the Baptism, but then and there did
 scornfully refuse and deny to use the said Sign, in Contempt of
 our said Sovereign Lord the King, and the Laws and Sta-
 tutes of this Kingdom of England, and also against the Peace
 of our said Sovereign Lord the now King, his Crown and
 Dignity.

The Statute of 3 Jac. c. 4. gives Power to Justices in Ses-
 sions to inquire, hear and determine of all Recusants and Of-
 fences, &c. for not coming to Church; and that at the Ses-
 sions in which an Indictment shall be found against such an
 Offender to make Proclamation, commanding him to render
 himself to the Sheriff of the County before the next Ses-
 sions; and if he shall not then appear, it shall be a Con-
 viction in Law upon the said Indictment for the Offence there-
 in mentioned, as if a Trial had been by Verdict.

That upon such Conviction, he shall either in *Easter* or
Michaelmas Term, which shall next happen, pay into the
 Exchequer after the Rate of 20 *l.* per Month, which shall
 be contained in the Indictment; and for every Month after-
 wards, without any further Indictment or Conviction 20 *l.*
 per Month by Half-yearly Payments in the Exchequer, as
 aforesaid, except the King will take two Parts in Three of
 the Lands of the Offender till he conform.

An Indictment upon this Statute.

Suffex, to **B**E it remember'd; That at the General Sessions of the Peace, held, &c. that R. B. of L. in the said County, Gent. on the 11th Day of September in the 5th Year of the Reign, &c. at L. aforesaid, was of the Age of Sixteen Years and upwards, and did not repair to the Parish Church of S. M. within the Town of L. aforesaid, or to any other Church, Chapel or usual Place of Common Prayer, nor was there at the Time of the Common Prayer, at any Time within ten whole Months from that Time next following, but hath forborn the same for the Time aforesaid, to the bad Example of others, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, &c. and also against the Form of the Statute in such Case made and provided, and therefore publick Proclamation hath been made here in the said Court of our Sovereign Lord the King, according to the Form of the Statute, that the said R. B. should render his Body to the Sheriff of the said County before the next General Quarter-Sessions of the Peace holden for the said County, before which said General Quarter-Sessions, that is to say, on the 9th Day of July, being the next General Quarter-Sessions of the Peace then held for the said County, after the Proclamation so as is before related to be made, the said R. B. did not render his Body to the Sheriff of the County aforesaid, nor appear according to the Form and Effect of a certain Statute in that Behalf made and provided, but hath made Default; wherefore the said R. B. is convicted.

This is no Judgment, because no Trial, and therefore though the Conviction should be erroneous, yet no Writ of Error will lye upon it, but the Remedy is to quash it in the Exchequer. Raym. 433.

For not wearing the Surplice.

Middx. to **T**HE Jurors, &c. That W. W. late of B. wit, in the said County, Clerk, on Sunday the 5th Day of August in the 4th Year of the Reign, &c. at B. aforesaid in the said County, that is to say, in the Parish Church there did publicly celebrate the Morning Prayers to divers Parishioners and Inhabitants of the said Parish then and there being in the said Church, and at the Time of the celebrating those Prayers did not put on, or make use of any Surplice, or other Ornament appointed to be used by Ministers within this Kingdom of England: And that the said W. W. on the same Day and Year above mentioned at the Time of the Celebrating

Dissenters, and Divine Service.

of the said Prayers at B. aforesaid in the said Parish Church, did entirely refuse to put on or make Use of any Surplice, contrary to the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

For omitting Words in Baptism.

Middx. to **T**HE Jurors, &c. *That G. W. late of R. in*
quit, *the said County, Clerk, being Rector of the*
Parish Church of R. aforesaid, on the 5th Day of August in
the 5th Year of the Reign, &c. at R. aforesaid in the said
County, did administer the Sacrament of Baptism in the Pa-
rish Church aforesaid, to a Female Infant, being the Daugh-
ter of T. C. then of R. aforesaid in the said County, and at
the Time of the administering of the Baptism aforesaid in the
said Church, did then and there voluntarily and obstinately
omit and refuse to say these English Words following, (that
is to say) *which said Words are mentioned*
and expressed in the Book of Common Prayer, in Disparage-
ment of the said Book of Common Prayer, and contrary to the
Form of the Statute in such Case made and provided, and also
against the Peace of our said Sovereign Lord the now King,
his Crown and Dignity.

For Disturbing a Minister's Preaching.

Suffex, to **T**HE Jurors, &c. *That T. R. late of C. in*
quit, *the said County, Yeoman, on the 5th Day of*
August in the 5th Year of the Reign, &c. at C. in the said
County did voluntarily, publickly and contemptuously molest and
disturb one T. W. Rector of the Parish Church of C. aforesaid,
then and there preaching in the said Church (the said T. W.
being lawfully obliged so to do, by reason of his Cure there),
and then and there did other Injury to the said T. W. to the
bad Example of other Offenders in the like Case, and contrary
to the Form of the Statute in such Case made and provided,
and also against the Peace of our said Sovereign Lord the now
King, his Crown and Dignity.

Against

Against a Minister, for not reading the
Common Prayer according to the Act
of Uniformity.

Middx. to **T**HE Jurors, &c. That H. P. late of C. in
quit, the said County, Clerk, and Vicar of the
Parish Church of C. aforesaid, being ill affected towards the
Common Prayers appointed to be used in Churches and Chapels
within this Kingdom of England, and established and publish-
ed by Authority of Parliament, which said Prayers are con-
tained in a certain Book entitled, The Common Prayer and
Administration of the Sacraments, and other Rites and Cere-
monies of the Church of England, on the 5th Day of August
in the 5th Year of the Reign, &c. being on a Sunday, and on
divers other Sundays, whereon the Prayers mentioned in the
said Book ought to have been read or said by the said H. P.
according to the Form of the Statute in such Case made and
provided, at C. aforesaid out of a most vitious and wicked
Mind, did not read or make Use of the said Prayers in the
Church aforesaid, but did omit and absolutely refuse to make
Use of the same, to the bad Example of all other Offenders in
such Case, and against the Peace, &c.

Distress. Vide Fees.

BY the 11 Geo. 2. c. 19. which was made to prevent the
Frauds of Tenants carrying their Goods clandestinely
off the Premises, and gives the Landlord a Power of seising
them within thirty Days after their carrying off, unless sold
Bona fide to a Person not privy to the Fraud; and gives a
Forfeiture of double the Value of the Goods against the Per-
son carrying them off, or such Persons assisting to carry off
and conceal such Goods, 'Tis Enacted by the fourth Section,
That where the Goods so carried off shall not exceed the
Value of 50*l.* the Landlord, his Bailiff, &c. may exhibit a
Complaint in Writing, against such Offenders before two
Justices of the Peace, residing near the Place, not being in-
terested in the Tenements, who may summon the Parties,
examine the Fact and all Witnesses upon Oath, or if Qua-
kers upon Affirmation, and in a summary way determine
whether such Persons be guilty of the Offence, and inquire
of the Value of the Goods by them fraudulently carried off
X 2 and

and concealed; and upon Proof of the Offence they may by Order adjudge the Offenders to pay double the Value of the Goods to the Landlord, &c. and if the Offenders having Notice of the Order neglect to do it, they by Warrant shall levy the same by Distress and Sale of Goods; and for want of Distress commit the Offenders to the House of Correction to hard Labour for six Months, unless the Money is sooner satisfied.

Se^{ct}. 5.

It shall be lawful for any Person, aggrieved by such Order of the two Justices, to appeal to the next Quarter-Sessions, who shall hear and determine such Appeal.

Se^{ct}. 6.

Where the Party appealing shall enter into a Recognizance with Surety, in double the Sum, ordered with Condition to appear at such Quarter-Sessions, the Order of the two Justices shall not be executed in the mean Time.

Se^{ct}. 7.

In Case such Goods so carried away, are put in a Place locked or secured, to prevent their being seised for Rent, it shall be lawful for the Landlord, &c. calling to his Assistance the Peace-Officer of the Place where suspected to be concealed, to break open such House, &c. and to seise such Goods for Rent as if they had been in an open Place; but in Case of a Dwelling-house, Oath must be first made before some Justice of Peace of a reasonable Ground to suspect that such Goods are there.

Se^{ct}. 16.

If any Tenant holding Tenements at a Rack Rent, or where the Rent reserved shall be full three fourths of the yearly Value of the Premises, being in Arrear for one Year's Rent, shall desert the Premises and leave them uncultivated and unoccupied, so that there is no sufficient Distress to countervail the Arrears, it shall be lawful for two Justices of the Peace, at the Request of the Landlord, &c. to go upon and view the same; and to affix on the most notorious Part Notice in Writing what Day (at the Distance of fourteen Days at least) they will return to take a second View, and, if upon the second View, the Tenant or some Person in his Behalf shall not appear and pay the Rent in Arrear, or there shall not be sufficient Distress upon the Premises, the Justices may put the Landlord in Possession; and the Lease to such Tenant, as to any Demise therein contained only, shall be void.

Se^{ct}. 17.

Provided such Proceedings of the Justices shall be examinable, in a summary Way, by the next Justices of Assize; if they sit in *London* or *Middlesex*, by the Judges of King's Bench or Common Pleas; if in the Counties *Palatine* before the Judges thereof; if in *Wales* before the Courts of Grand Sessions, who may order Restitution to be made to such Tenant with his Costs to be paid to the Landlord, if they shall see Cause for the same; and if they affirm the Justices Act, to award Costs for the Appeal not to exceed 5*l*.

Dogs.

Dogs. See Game and Hunting.

Lords of Manors, but not under the Degree of an Esquire, may license Game-keepers within their Manors to seize Dogs of Persons not qualified; a Justice of Peace may license any other Person by his Warrant to search in the Day-time suspected Houses, and seize and keep the Dogs of unqualified Persons for the Use of the Lord of the Manor. 22 & 23 Car. 2. c. 25. §. 2.

Also Constables, &c. may, by a Justice's Warrant, search the Houses of suspected Persons; and if they find any Greyhounds, Setting-dogs, Coney-dogs and Lurchers in the Possession of Persons unqualified, they must carry them before a Justice of Peace; and if they do not give good Account how they came by such Dogs, they shall be convicted by the Justice, and pay not under 5*s.* nor exceeding 20*s.* for every Dog; one Moiety to the Informer, the other to the Use of the Poor, where the Offence was committed, to be levied by Distress; and if that cannot be taken, then must he be sent to the House of Correction, for any Time under a Month, but not less than ten Days, there to be whipt and kept to hard Labour. 4 & 5 W. & M. c. 25. §. 3. And no *Certiorari* shall be to remove the Conviction or other Proceedings, unless the Party convicted do, before the Allowance of it, become bound to the Prosecutor in 50*l.* with Sureties to be approved by the Justice, before whom the Conviction was, to pay the Costs and Charges upon Oath within a Month after 'tis confirmed, or a *Procedendo*. §. 7.

A License to hunt, &c. and to seize Dogs, &c.

TO all to whom this Writing shall come, I R. B. of, &c. Lord of the Manor of W. send Greeting: Know ye, that I the said R. B. have given and granted, and do hereby give and grant unto R. P. of, &c. full Liberty and Authority to hunt at all seasonable Times hereafter, for the Space of three Years next ensuing, within the said Manor or Lordship of W. in the County aforesaid, and upon the Lands and within the Limits thereof, in the same Manner as I myself might or could do, without any Let, Denial or Disturbance whatsoever: Giving likewise hereby full Power and Authority to the said R. P. and his Assigns, from Time to Time during the said Term, to seize all Dogs and Spaniels whatsoever, of any Person or Persons who are prohibited by the Laws or Statutes of this Realm to keep the same, and who shall during the Term above-

Dogs.

mentioned hunt within the said Manor without his Consent, and the said Dogs to keep and detain to and for my Use. Given under my Hand and Seal, &c.

A Warrant to a Game-keeper, or any other Person, to search for Dogs.

To the Constable of, &c. and to R. P. of H. in the County of *Suffex*, Yeoman.

Suffex, to **T** Hese are to require you, or either of you, to wit, search in the Day-time, the Houses, Out-houses or Places of any Person or Persons within the Hundred of, &c. whom you shall have just Occasion to suspect, or be inform'd to keep Setting-dogs, Coney-dogs, or other Dogs, to destroy Partridges, Hares or Conies, not being qualified * by Law to keep the same; and the Dogs which you shall find in the Possession of such Person or Persons, to keep and seize to and for the Use of the Lord of the Manor where they shall be taken: But you are not to search the Houses of any Person who hath an Estate of 100 l. by the Year, or who hath a Lease for any long Term of Years of the clear yearly Value of 150 l. by the Year, or of him who is the Son and Heir apparent to an Esquire, or other Person of higher Degree, or of those who are Keepers or Owners of Forests, Parks, Chases or Warrens; and you are to certify me with all convenient Speed, what you shall do in the Premises. Given, &c.

* 100 l. per
Ann. Son of an
Esquire; 100 l.
by Lease per
Ann. 22 & 25
Car. 2. c. 25.

The like Proceedings upon the same Statute may be had against any of the Offenders following, *viz.* Those who are not qualified, and who keep,

- | | |
|-----------------|---------------------------|
| 1. Bows. | 9. Nets. |
| 2. Coney-Dogs. | 10. Setting-Dogs. |
| 3. Ferrets. | 11. Snares. |
| 4. Grey-Hounds. | 12. Tunnels, or any other |
| 5. Hare-Pipes. | Instrument for de- |
| 6. Hays. | stroying Fish, Fowl, |
| 7. Low-Bells. | or any other Game. |
| 8. Lu chers. | |

As you may see in the Precedents under the Head of Game, upon the Statute 4 & 5 W. & M.

They may be convicted before one Justice, for not giving a good Account how they came by the same, or producing the Party of whom they were bought, &c.

And no *Certiorari* is to be allowed, unless the Offender convicted become bound with Sureties in 50 l. to the Prosecu-
tor,

tor. &c. The Form of which Bond and Condition you may see in Title *Deer stealing*, for the Proceedings are the same.

A Warrant against one not qualified to keep Bows, Coney-Dogs, &c.

To the Constable, &c.

Suffex, to **W** Hereas *I am credibly informed, That T. B. wit, of, &c. doth keep and use Grey-hounds, &c. (as the Case is) to destroy the Game, and that he is not qualified by the Law of this Realm to keep or use the same: These are therefore to require you forthwith to apprehend the said T. B. and to bring him before me, or some other Justice of the Peace for this County, to answer the Premises; and farther to be proceeded against according to Law. Given, &c.*

The Qualifications are ;

1. He must be Owner of a free Warren.
2. A Lord of a Manor.
3. Or he must have an Estate of Inheritance of 100 l. *per Ann.* either in his own, or in the Right of his Wife, or for Life.
4. Or a Lease for 99 Years of 150 l. *per Ann.*
5. Or must be the Son and Heir of an Esquire, or one of an higher Dignity.

22 & 23 Car.
c. 25. f. 3.

Dooz, breaking open. See Arrests, Warrants, Constable, Force lawful.

Drovers. See Badgers.

Drunkenness. See Ale-house.

MY Lord Coke tells us, That King *Edgar* permitting the *Danes* to inhabit here, they first brought excessive Drinking among us.

I believe this may be a true Account; for I find in the Reign of the preceding King, that he caused Drinking-Pots of Brass to be fixed to Posts near such Springs which were contiguous to the Highways, that Travellers might drink out of them, and be refreshed.

I only mention this, to shew the Temperance of that Age; but after the *Danes* came amongst us, the People soon left drinking *Water*, and in the very next King's Reign began to

3 Inst. 201.

drink *Ale*; who made a Law, That if any Man quarrelled and beat another in an *Ale-house*, he should pay to the Value of 16 s. in the Money then current: And this is the first Time that we find any Mention of an *Ale-house*, tho' 'tis certain Men drank to Excess before; and King *Edgar* himself made Laws against it, which (by the Way) were very old at that very Time, when my Lord *Coke* told us the Laws against Drunkenness were very new.

'Tis true, he mentioned King *Edgar*, but look'd no farther back than to the Statutes of King *James*; by which 'tis enacted, That any Justice of Peace upon his own View, Confession of the Party, or Proof of one Witness upon Oath, may convict any Person for Drunkenness.

Being convicted, he is to pay 5 s. for every Offence to the Church-wardens of the Parish where the Offence is committed, within one Week after Conviction; which if he neglects or refuses, the same may be levied upon his Goods by Warrant from one Justice, before whom he was convicted; and if not able to pay it, then he is to be put in the Stocks six Hours for every Offence.

If he is convicted the second Time, then he may give Bond in 10 l. viz. Two Sureties, to be of the Good Behaviour, or be committed.

The Prosecution must be within six Months after the Offence.

The inferior Officer neglecting to levy the Penalty forfeits 10 s. to be levied and disposed as the Penalty itself.

This is the Substance of the Statutes 4 Jac. 1. cap. 5. §. 2. and 21 Jac. 1. cap. 7. the former Statute being made perpetual by the later.

21 Jac. 7. c. 3.

The Prosecution upon the first of these Laws was to be, and is still, before Justices of the Peace in their Sessions by Way of Indictment, where the Offender must be convicted: But by the last Statute, one Justice hath Power to convict this Offender, as above-mentioned; which, as to this Matter, was all the Alteration which was made, for the Penalty is the same as before; so likewise is the Manner of levying it.

Drunkenness is a sufficient Cause to remove a Magistrate.

The first Conviction within six Months
after the Offence.

To the Constable of the Hundred of L. and to the Church-
wardens of the Parish of H. in the said County.

Suffex, to **W** Hereas J. S. of the Parish of H. in the said
County, Blacksmith, was on this present Day,
upon due * Proof, convicted before me for being drunk on the
19th Day of August last past, in the said Parish: These are
therefore to require you to demand the Sum of 5 s. of the said
J. S. for the Use of the Poor of the said Parish; which, if
not paid into the Hands of the Church-wardens of the Parish
aforesaid, within one Week next ensuing, that then you levy
the same upon the Goods and Chattels of the said J. S. by Dis-
tress and Sale thereof, rendring unto him the Overplus: And
if the said J. S. shall not be able to pay the said Sum, if no
Distress can be taken, that then you set him in the Stocks, there
to remain for the Space of six Hours. Given under my Hand
and Seal this 22d Day of August, &c.

* Upon View
of the Justice,
or upon Con-
fession, or Oath
of one Witness.

The second Conviction for Drunkennes
within six Months after the Offence.

To the Constable of, &c. and to the Keeper of the Gaol for
the said County.

Suffex, to **W** Hereas J. S. of the Parish of H. in the said
County, Blacksmith, was upon the 22d Day
of August last, lawfully convicted before me for Drunkennes in
the 19th Day of this Instant August, in the Parish aforesaid:
And whereas the said J. S. was in like Manner this present
Day the second Time convicted before me for being drunk in the
said Parish on the 23d Day of August last: These are there-
fore to require you, or one of you, to bring the said J. S. before
me, or some other Justice of the Peace for this County, to be
bound with Sureties to his Majesty in one Recognizance or Ob-
ligation of 10 l. conditioned to be from henceforth of the Good
Behaviour, according to the Form of the Statute in that Case
made and provided; which if he shall refuse to do, that then
you convey him to the said Gaol, and deliver him to the Keeper
thereof, together with this Warrant: Commanding you the
said Keeper to receive the said J. S. into your Custody, and him
safely to keep until he shall be bound with Sureties as aforesaid.
Given, &c.

The

The Recognizance.

Suffex, to **B**E it remembered that on the first Day of October, &c. came before me W. N. Esq. one of the Justices of our said Lord the King assigned to keep the Peace in the County aforesaid, T. P. of, &c. and J. O. of, &c. and J. S. of, &c. and acknowledged themselves to stand indebted to our said Lord the King, to wit, the said Bail in 5 l. a-piece, and the said T. P. in 10 l. of good and lawful Money of this Realm, to be made and levied of their Goods and Chattels, Lands and Tenements, to the Use of our said Lord the King, his Heirs and Successors, if Default shall be made in the Condition within written.

Taken and acknowledged the
Day and Year aforesaid
before me,

W. N.

THE Condition of this Recognizance is such, That if the above-bounden J. S. shall personally appear before his Majesty's Justices of the Peace, at the next General Quarter-Sessions of the Peace to be holden at L. for the County of S. and in the mean Time shall be of the Good Behaviour, and shall not depart from the Court without Leave thereof, then this Recognizance to be void, otherwise to be in full Force.

Indictment for that he was *Communis Poculator* (*Anglice*, a common Drunkard,) and *Communis profanus jurator* & *perturbator pacis* (*Anglice*, a common prophane Swearer and Disturber of the Peace,) & *assiduus domorum Tiplatoriarum frequentator*, (*Anglice*, a frequenter of Tipling-houses,) this is too general and loose.

An Indictment against a common Drunkard.

Suffex, to **T**HE Jurors, &c. That J. S. of H. in the said County, Blacksmith, for the Space of six Months now last past, at H. aforesaid in the said County, was and yet is a common Drunkard, and on divers Days and Times within the Time aforesaid, at the Parish aforesaid in the said County was drunk, and that the said J. S. on divers Times aforesaid, at the said Parish, in his Drunkennes with Force and Arms, that is to say, with Staffs, Swords and Knives, did make an Assault and Affray upon one T. P. and other Subjects
of

of our said Sovereign Lord the now King, and did refuse to keep or observe the Peace of our said Sovereign Lord the King, at the Command of the Constable of the Town aforesaid, to the great Disturbance of the Subjects aforesaid, and against the Peace, &c.

Judgment 5 s. for every Offence, and bound to Good Behaviour; if not able to pay 5 s. for every Offence, then he must be put in the Stocks six Hours for every such Offence. Prosecution must be within six Months after the Offence. 4 Jac. c. 5.

Note; These Statutes do not take away any Jurisdiction which is lodged in the Ecclesiastical Courts, pro Reformatione Morum (for the Reformation of Manners.)

An Indictment against a common Drunkard in another Manner.

Suffex, to **T**HE Jurors, &c. *That J. S. late of, &c. on wit, the fourth Day of May in the fifth Year of the Reign, &c. and on many Days and Times, as well before as afterwards, at H. in the said County, and elsewhere in divers other Places within the said County, was and yet is a common Drunkard, and a common Disturber of the Peace of our said Sovereign Lord the King, to the bad Example of other Subjects of our said Sovereign Lord the King, and against the Peace, &c.*

These Acts of Parliament are so far from being duly executed, that, to the great Scandal and Corruption of this Nation, our greatest Men give a Sanction to this Vice, by Drinking themselves into the Good-will of the Electors every new Parliament.

See Ale-houses.

Duelling. See Challenges.

Dyers.

SEE the Stat. 13 Geo. c. 24. for preventing Frauds and Abuses in the Dying Trade; wherein divers Penalties are imposed on false dying of Bays and Cloths, either as *ma-sherd Blacks* or *woaded Blacks* respectively, (*Note some Words seem omitted in the printed Statute,*) and such as are truly dyed to be mark'd, the Former with a red and blue Rose, and

Dyers. Eggs. Egyptians.

and the Later with a blue Rose; with a Penalty of 4 *l.* for forging Marks, and other Penalties for using Logwood, &c.

Dyers within *London* and ten Miles thereof subject to the Inspection, &c. of their Company, and in other Places to the Justices in Quarter-Sessions, who may appoint Searchers, who with a Constable may in the Day-time enter any Dyer's Shop, Ware-house, &c. to search Cloths if duly dy'd and mark'd, and if resisted, to recover 10 *l.* of the Offender by Action, &c. in *Westminster-Hall*; but in Cases where the Penalty does not exceed 5 *l.* 'tis to be heard and determined by two Justices of the County or Place, &c. on Oath of one Witness: The whole Penalty, if out of the Limits *supra*, to go to the Informer, to be levied by Distress, &c.

But the Prosecution must be within forty Days, and an Appeal lies to the Quarter-Sessions. See the Act.

Eggs. Vide Game.

OF any Wild-fowl usually eaten, if taken from the Nest, or destroyed between the first of *March* and the last of *June*, Imprisonment for a Year, and forfeits for every Crane's Egg, or Bustard's Egg, 20 *d.* for the Egg of a Bittern, Heron, or Shovelack, 8 *d.* For the Egg of a Duck, Teal, or other Wild-fowl, 1 *d.* 25 *H.* 8. c. 11. §. 5.

1 Jac. 1. c. 27.
f. 2.

Taking or willingly destroying Eggs of Pheasant, Partridge, Swan, Imprisonment for three Months, unless he pay to the Church-wardens of the Parish where the Offence was committed, or Party taken, to the Use of the Poor, 20 *s.*

Conviction is to be by Confession, or Oath of two Witnesses, before two Justices where the Offence is done, or the Party taken. 1 Jac. c. 27.

Egyptians. See Rogues and Vagabonds.

THE first Statute relating to *Egyptians* is 22 *Hen.* 8. c. 10. §. 2. that they shall be tried by an *English* Jury, and not *per medietatem lingue*.

An Indictment upon the Statute of the
5 Eliz. c. 20. for calling himself an
Egyptian.

Suffex, to **T**HE Jurors, &c. that J. R. and J. H. each
wit, of them being of the Age of fourteen Years and
upwards, on the fifth Day of May in the fifth Year of the
Reign, &c. at H. aforesaid in the said County did call them-
selves Egyptians, and did disguise themselves by their Speech or
other Behaviour like unto certain Vagabonds, commonly called
Egyptians, and so did continue and remain at H. aforesaid in
the said County from the said fifth Day of May in the Year a-
bove-mentioned, unto the fifth Day of June then next ensuing,
in Contempt of our said Sovereign Lord the now King and his
Laws, and against the Peace of our said Sovereign Lord the
King, his Crown and Dignity, and against the Form of the
Statute in such Case made and provided.

If above fourteen Years of Age, and shall call himself an 5 Eliz. c. 20.
Egyptian, or shall be in Company with those who disguise
themselves in Habit, Speaking or otherwise like Egyptians,
and continue in England one Month, 'tis Felony without Be-
nefit of Clergy. 1 & 2 Ph. & Mar. c. 4.

He who transports them forfeits 40 l. between the King
and Prosecutor.

Escape.

THIS is where one is arrested, and afterwards is at
Liberty, not being delivered by due Course of Law;
and 'tis either Negligent or Voluntary; but in Trespass, or
any Offence not Treason or Felony, there is no Difference
whether the same is voluntary or not, for in both Cases the
Officer is finable.

By a Stranger.

If a Stranger apprehend a Felon, or one suspected, and
delivers him to another, who suffers him to go at large, 'tis
an Escape in both; for the first Man ought to have delivered
him to the Constable.

For Murder, the Township shall be amerced if the Mur-
derer escape *tempore diurno* (in the Day-time), though it was
com-

committed in the Town, Field, or in a Lane, but then there should be Complaint made to a Justice of Peace.

By Negligence in Officers.

To bail one not bailable by Law, *pro defectu Scientiæ* (for Want of Knowledge), is a negligent Escape.

A Gaoler suffering a Prisoner to go abroad, tho' he return, 'tis a negligent Escape, and finable, for he ought to keep him in *arcta Custodia* (in close Custody); yet *per Hale*, Ch. Justice, if after a negligent Escape, and before the Gaoler is punished, he take the Prisoner upon fresh Suit, he is excused. 3 Rep. 52. *Rigway's Case*.

If the Gaoler is insufficient, the Sheriff must answer for these Escapes, because 'tis a Civil Action; but 'tis otherwise where the Offence is Criminal.

The Punishment is aggravated by the Proceeding against the Party escaping; for if attainted, and afterwards he escapes, 'tis 100 *l.* Fine; if indicted, 5 *l.* Fine; if not, then 'tis fineable at Discretion.

Voluntary.

1. Where 'tis Felony.

1. The Act must be Felony at the Time of the Escape, otherwise 'tis but fineable.

2. There must be a legal Commitment.

After a Pardon for Murder, but pending an Appeal, the Prisoner was suffered to escape; 'tis Felony in the Gaoler. *Plowd.* 476. *B.* So it is likewise to suffer a Felon wilfully to escape, or to bail him, for he hath no Power to take Bail.

'Tis the same Crime in a Justice to take a Felon out of Gaol without Bail, or suffer him to go at large without Bail or Commitment, who confesses a Felony before him.

'Tis Felony likewise in a Constable to suffer a Felon to destroy himself.

He, who suffers the Escape, must be punished for the same Crime for which the Party escaping stood committed.

Dyer 99. pl. 60.

A Man was put in the Stocks upon Suspicion of a Felony, and another lets him go; this was held to be Felony at Common Law, although the Party was never indicted.

1 Leon. 137.

As to the Amerciament of a Vill, where a Felony is done, and the Offender escapes, if it is in the *Day-time*, the Vill is answerable; but if in the *Night*, 'tis otherwise. As for Instance; it was found before the Coroner, that *B.* on the tenth of *January* 30 *Eliz.* struck another about Four in the Afternoon, of which Stroke he died at Eight in the Evening of the same Day, and the Offender escaped, for which the Town of *Green* in *Suffex* was amerced; but it was discharged, for the Man died in the Night, and it was not Felony

lony before was dead ; which being in the *Night*, the Town is not chargeable for the Escape.

If a Felon escapeth after Condemnation, and is retaken, Poph. 131. upon Confession or Proof that he is the same Person, he shall be executed.

Voluntary. } He who wounded another is taken by a
2. No Felony. } Constable and suffer'd to escape, the
wounded Man dies within a Year and a
Day, 'tis only finable. 3 Leon. 207.

A Man is taken for Manslaughter *per infortunium*, or *se defendendo* (by Misfortune, or defending himself,) and suffer'd to escape, 'tis not Felony in the Officer, but finable.

These Escapes must be presented before the Offender shall be compelled to answer.

Justices of the Peace have Power in Sessions to inquire of Escapes of Felons. 1 R. 3. 3.

By a late Statute, the Sheriff may commit his Prisoner to the Gaol where he keeps Prisoners for Debt, and not to the common Gaol of that County where the Offender was taken, but subject to the same Restrictions, Regulations and Penalties, as if he had been committed to the common Gaol ; and if the Party escape out of the Place, the Sheriff shall be answerable as in other Escapes. 5 Annæ, c. 9.

But the Offender may be re-taken, even upon the Lord's Day, by Virtue of a Warrant from a Judge, upon Oath made before any Person commissioned under Seal of the same Court in the County, and the Oath duly filed, as if such Oath had been made before the Judge himself.

An Indictment against a Gaoler for a voluntary Escape of one suspected of Felony.

Suffex, to THE Jurors, &c. That whereas one S. J. late of H. in the said County, Spinster, on the twentieth Day of August in the fifth Year of the Reign, &c. at H. aforesaid in the said County was taken and arrested upon * Suspicion of having committed a certain Felony, that is to say, for Stealing of a black Cow of the Price of three Pounds, feloniously led away by her the said S. J. as it is said, and that afterwards she was brought before R. B. Esq; one of the Justices assigned to keep the Peace of our said Sovereign Lord the King in the said County, and thereupon the said S. J. on the Day, Year and Place above mentioned by a Warrant

the said A. B. at H. aforesaid in the said County, upon one C. D. If the Evidence is plain, then say, done and committed by him the said A. B. &c.

* Or as the Offence is ; if for Murder, then say, — for Felony and Murder supposed to be done and committed by him

from

from the said Justice was delivered and committed to one J. L. Keeper of the Gaol of our said Sovereign Lord the King in and for the said County at H. in the said County of Suffex, to be safely kept in the said Gaol, until the said S. J. should be lawfully delivered therefrom; nevertheless the said J. L. the then Keeper of the said Gaol, afterwards, that is to say, on the twenty-first Day of August in the Year above-mentioned at H. aforesaid in the said County, did then and there voluntarily and feloniously permit the said S. J. then and there being in Custody in the said Gaol, to go at large and escape out of the said Gaol and Custody against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

An Indictment against a Constable for the Escape of a Felon committed to him.

Suffex, to **T**HE Jurors, &c. That whereas T. P. late wit, of H. in the said County, Taylor, on the twentieth Day of August in the fifth Year of the Reign, &c. at H. aforesaid in the said County was taken and arrested upon Suspicion of a Felony to have been committed by him, that is to say, for stealing of five Pounds in ready Money of the Goods and Chattels of one W. G. of H. aforesaid in the said County, and the said T. P. on the Day, Year, and Place above-mentioned for the Felony aforesaid was * committed to J. O. of L. in the said County, Yeoman, being then Constable of the Town of L. aforesaid, by a Warrant from R. B. Esq; one of the Justices assigned to keep the Peace of our said Sovereign Lord the King in the said County, which said J. O. was commanded by the said Warrant safely to keep the said T. P. and to convey him to the Gaol or Prison of our said Sovereign Lord the King at H. in the said County, and then and there to deliver him to the Keeper of the Gaol or Prison aforesaid, to be safely kept, until he should be lawfully delivered therefrom; nevertheless the said J. O. and one R. D. late of H. in the said County, Labourer, on the twenty-first Day of August in the fifth Year above-mentioned at H. aforesaid in the said County did † voluntarily and feloniously permit the said T. P. so being in Custody of the said J. O. for the Felony aforesaid, to escape and go at large, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

* In a due
Manner.
1 Vent. 170.

† If 'tis for a
negligent E-
scape, then say
did negligent-
ly permit the
said T. P. so
being in Custody of the said J. O. for the Felony aforesaid, for Default of good
and diligent Keeping, to escape and go at large, against the Peace, &c.

Cro. Eliz. 200. It is necessary to set forth where the Party was taken, be-
Bouche's Case, cause, upon Not guilty pleaded to this Indictment, the Verdict
must

must come from the Place where the Offender was taken; as well as from that Place where he escaped.

'Tis necessary likewise to shew for what Felony he was taken, because the Constable may traverse it, and when it was committed.

Cro. Eliz. 752.
Plowman's
Case.

My Lord Coke, in his Exposition upon the Statute *de frangentibus Prisonam* (of breaking Prison), is of Opinion, That the Gaoler shall not answer for a voluntary Escape until the Prisoner be attainted. 2 Inst. 592. And gives this very good Reason, That a third Person's Felony shall not be tried between the King and the Gaoler.

Escheat.

THIS is a casual Profit which happens to the Lords by Chance, and unexpected, and it is usually by one of these Means:

ff. *Aut quia* { *Suspensus per Collum.*
 { *Abjuravit Regnum.*
 { *Uilagatus est.*

To wit, or because { He is hanged by the Neck.
 { Hath abjured the Kingdom.
 { Is outlawed.

Estray.

THIS is where any Beast cometh into a Lordship, and none knoweth the Owner; in such a Case it shall be seized to the Use of the King, or of the Lord who hath a Title to it, either by Grant or Prescription.

If the Lord makes Proclamation in some Markets near him, the Property shall be vested in him, if the Owner doth not come and claim it within a Year and a Day after the Seizure.

Bracton tells us, That *olim fuit inventoris de jure naturali* (formerly it was the natural Right of the Finder;) but that now 'tis the King's *jure Gentium* (by the Law of Nations); and this Prerogative is granted to many Subjects; so that now it belongs to the Lord of the Franchise where found.

Adjdg'd, That at any Time within the Year the Owner may seize an *Estray*, where-ever he finds it, without telling the Marks or proving the Property, but then he must tender

2 Salk 685.
Henley and
Walsh.

Estray. Estreats.

Amends, which he may do generally, without mentioning any particular Sum, because the Owner of such *Estray* is no Wrong-doer, and it is impossible for him to know how long the *Estray* had been in the Keeping of another Person, or how much would make him Satisfaction.

Estreats.

THESE are the Extracts of Fines, Forfeitures and Amercements, taken out of the Rolls of the Clerk of the Peace; of which he makes two Parts, and delivers one to the Sheriff, the other to the Barons of the *Exchequer*.

Estreats of the Penalties for shooting in Guns, must be sent into the *Exchequer* by the Justice who examined the Matter.

The Sheriff levying the King's Debt, without shewing the Party the Estreat under the Seal of the *Exchequer*, must be fined, and pay treble Damages to the Party.

Issues estreated shall not be levied upon any other Person than upon him who by the Estreat ought of Right to be charged, upon Pain that every Clerk writing such Estreat, and causing it to be executed, and the Officer, shall forfeit five Marks to the King, and as much to the Party grieved, to be recovered by Action of Debt, &c. 27 *Eliz. c. 7. §. 2.* Power is given to Justices of the Peace to hear and determine the Offences in that Act.

The Queen's Moiety of 5 *l.* forfeited by him who shall be a Badger contrary to the Statute of 5 *Eliz. 12.* which see in Title *Badger*.

By the Statute of 2 & 3 *P. & M. c. 8.* Stewards of Leets have Power to fine those who do not work on the Highways; and within six Weeks after *Michaelmas* they must deliver Indentures of those Fines estreated; one to the Bailiff or High Constable of the Liberty, the other to the Constable or Church-warden of the Parish where the Offence was committed.

In Default of Presentment at Leets, the Justices, in their Sessions shall fine these Defaulters; and then the Clerk of the Peace must deliver indented Estreats under his Hand and Seal as aforesaid, which shall be a Warrant to levy, &c.

Evidence.

Evidence. See Felonies.

THE Witnesses, &c. must be bound in a Recognizance to appear and give Evidence at the next General Gaol-delivery; if they refuse, they may be committed, or bound to Good Behaviour.

The Lord *Preston* was committed by the Court of Quarter-Sessions, for refusing to be sworn, and give Evidence to the Grand Jury on an Indictment for Treason; 'tis a great Contempt of the Court; but the safest Way had been to fine him, and then to have committed him till he had paid the *Fine*. But as it was otherwise, he was bail'd. *Holt* 752. *Salk.* 278. S. C.

The Wife can be no Witness against her Husband, unless she is the Party grieved; in such Case it hath been allowed.

In my Lord *Audley's* Case, which was for being accessory Hutt. 146. to a Rape of his Wife, she was admitted as Evidence against him; and then a Distinction was made between the Case of a common Person between Party and Party, and the Case between the King and the Party upon an Indictment; in the first of which Cases she may not be a Witness, and in the last she may: But my Lord *Hale* was of another Opinion, viz. That in Felonies neither the Wife nor her Examination shall be used for or against her Husband; and that Distinction H. P. C. 263. in my Lord *Audley's* Case hath since been denied to be Law.

But yet a Wife *de facto* (indeed), as an Heiress taken away, Raym. 1. and by Threats prevailed on to marry the Man, shall be a good Witness against him; and if convicted upon her Evidence, shall be hanged. 1 *Vent.* 243. *Brown's* Case. 3 *Keb.* 193.

One *Johnson* was indicted for Felony, and *Browning* and his Wife were Evidences to prove it at the Trial, but *Johnson* was acquitted, and afterwards he brought an Action against *Browning* for a malicious Prosecution; in which Case it was necessary for him in his Defence to prove, that a Felony was committed; for otherwise he had no probable Cause to prosecute *Johnson*; and there being no Body present but he and his Wife when the Felony was committed, and because she could not be a Witness for her Husband in this Action brought against him; *Holt* Chief Justice allowed, That the Oath which she had made on the Trial of the Indictment might be given in Evidence to prove that a Felony was committed. Mod. Cases 216. 6 Mod. 216. *Johnson* and his Wife against *Browning*.

An Infant may be a Witness even against his Parents indicted for Witchcraft. *Dalt.* 366. c. 164. §. 3.

One attainted of Perjury, though pardoned, or of Forgery or Conspiracy, is not to be a Witness; yet the Justice may

may bind such Witnesses to give Evidence, but he is to inform the Judge of their Credit. Yet one convicted of Felony, and pardoned, is a Witness, for the Pardon takes away both *pœnam* & *reatum* (the Guilt and Punishment). *Godb.* 288. *Raym.* 369. 1 *Vent.* 349. So likewise, if burnt in the Hand. *Style* 388.

Queen & Mac-
kartney, Holt
300.
Salk. 286 S. C.
6 Mod. 301.
C. S.

In an Indictment for a Cheat, by imposing on *R. B.* a Quantity of Beer mixed with Vinegar and Grounds of Coffee for Port Wine, one of the Defendants pretending himself to be a Broker, and the other a *Portugal* Merchant; and Chief Justice *Holt* allowed *R. B.* to be a Witness to prove the Cheat; for in such Cases, no Body else is so proper as he who is cheated. In an Information for a Cheat, the Fact was thus, *to wit*, The Defendant had a Promise from his Mother-in-Law of a Note of 10*l.* and by some Contrivance he got a Note of 100*l.* Adjudged, that the Mother-in-law could be no Evidence, she being concerned in the Consequence of the Suit; for in Cases of Forgery or Perjury, the Party whose Interest is defeated or prejudiced by the Deed, is no Evidence to prove the Fact.

King & Whi-
ting, Salk. 283.

A Person convicted of publishing a Libel, and another for singing a Ballad against the Government, and both sentenced to the Pillory, were Witnesses to a Will: And upon an Appeal to the Delegates, they were allowed to be good Witnesses, because the Infamy arises from the Nature of the Crime, and not from the Judgment; but in this Case, neither of the Offences are infamous, either by the Canon or Civil Law (and 'tis upon these Laws that they were now to judge) tho' it is otherwise by the Common Law. *Levinz* 3 Part, 426. *Chater* and *Hawkins*.

But a Person duly set in the Pillory is not allowed by our Law to be a Witness. *H. P. C.* 263.

King & Paine,
Salk. 281. S. C.
5 Mod. 163.
S. C.

In an Information for a Libel against the Government, the Attorney General offered in Evidence some Depositions taken before a Justice of Peace concerning the Fact, the Witness being dead; but it was not allowed by the Court, because such Depositions may be used only in Evidence in Cases of Felony, by the Statute 1 & 2 *P. & M. c.* 13. and therefore shall not be extended any further.

If a Witness be not able to travel, the Justice may excuse his Personal Appearance, and certify his Examination at the next Assizes.

If a Felon confess the Fact, he may give Evidence against another, as well to the Jurors, who shall then inquire thereof on the Behalf of the King, as also to those who shall pass upon the Trial of the said *T. P.* for the same.

In the Case of the Regicides, it was resolved, That any of the King's Counsel might privately manage the Evidence for the King before the Grand Jury, in Order to the Finding the

the Bill, because the King's Counsel are the only Prosecutors in his Cases.

In Treason working Corruption of Blood, or in Mispri-
fion of such Treason, the Party accused is not to have a
Note of the Witnesses Names against him, but they must be
two lawful Persons, and both to the same Overt-Act of the
same Treason: And therefore, If two or more distinct Treas- 7 W. 3. c. 3.
ons are alledged in one Indictment, one Witness to one, and
another to another Treason, they shall not be esteemed two
Witnesses.

And no Evidence shall be admitted to an Overt-Act, which
is not expressly laid in the Indictment.

The Accused may make his Defence by Witnesses upon
Oath, and may have the same Process to compel them to
appear, as is usually granted for Witnesses against him.

The Confession of a Criminal to a private Person, or to a H. P. C. 193,
Magistrate out of Court may be given in Evidence against 264.
the Person confessing, but not to be used against another; Keyl. 18, 19.
and where the Confession is used against him who confesses,
it must be taken altogether, as well that Part which makes
for him, as that which makes against him.

By the Statute of 7 Jac. 1. c. 1. Felonies committed by
Englishmen in Scotland, are to be tried by a Jury of *Cumber-*
land, Westmorland or *Northumberland*; and the Felon shall
be admitted to have his Witnesses examined upon Oath, &c.
which my Lord Coke tells us, is a good Precedent for the
Discovery of Truth, and to inform the Consciences of the
Judge and Jury; for *Jurato creditur in judicio* (for in Judg-
ments the Oath gives Credit to the Testimony); and that
there is not so much as *Scintilla juris* (a Glimpse of Right)
against the Examination of such Witnesses upon Oath. But
notwithstanding his Opinion, it was never allowed in Treas-
on before the Statute of 7 W. and the Practice was still
otherwise in all other Felonies.

But now by another Statute, any Person produced as a 1 Annæ, c. 9.
Witness on the Behalf of a Prisoner upon Trial for *Treason* f. 3.
or *Felony*, must be upon Oath to speak the Truth, the whole
Truth, and nothing but the Truth; and if convicted of
wilful Perjury, shall suffer such Punishment as by the Law
may be inflicted on such an Offender.

As to what Evidence shall maintain the Indictment, these
Things are to be observed:

1. If the Felony is laid to be committed one Day, the H. P. C. 264.
Jury may find the true Day, and the Forfeiture shall relate
to that Day.

Hal. P. C. 264. 2. If 'tis laid to be done in a certain Place, the Evidence may be of the Fact in another Place ; but then it must be in the same County.

H. P. C. 265. 3. If the Indictment and Evidence differ in the *Manner* of the Death, then it doth not maintain it ; as if a Man is indicted for poisoning, and the Evidence is of Stabbing : But where they agree in Substance, 'tis otherwise ; as if the Indictment is for poisoning with one Sort of Poison, and the Evidence is of another.

Mackallie's Case, 9 Co. 67. 4. Indictment that *A.* gave the mortal Wound, and that *B.* and *C.* were *present and abetting* ; the Evidence was, That *B.* gave the Wound, and the others were abetting ; and held that it maintained the Indictment.

Lord Sanchar's Case, 9 Co. 119. 5. So an Indictment against *B.* as Accessary to *D.* and *R.* and the Evidence is only, That he was Accessary to one of them ; maintains the Indictment.

9 Co. 67. 6. So for Murder of *Malice forethought*, and the Evidence is of Malice only *in Law* or implied ; as killing an Officer in Execution of Justice, or without Provocation, will maintain the Indictment.

On an Indictment for High Treason, Evidence may be given of the Fact *at any Time before, or after the Time* laid in the Indictment, because it is only a Circumstance and Form ; for some Day must be alledged, and 'tis not material what Day, but it must not be after the Indictment found ; neither is the Evidence tied up to the *Place*, so it be in the same County ; and thus it is in all criminal Cases.

Upon the Statute of Stabbing, the Evidence was, That the Deceased gave the first Stroke, 'tis sufficient to maintain the Indictment for Manslaughter.

Feme Covert.

A *Feme Covert* (married Woman) or Infant, being a Witness, cannot be bound in a Recognizance to appear at Sessions ; and if she is bound with her Husband, 'tis void as to her ; but they may be bound by Sureties ; and if a *Feme Covert* cannot find Sureties, he shall be committed.

A Warrant to summon a Witness concerning a Felon.

To the Constable, &c.

Suffex, to wit, **W** Hereas I have been informed, That T. B. of, &c. was lately robbed at, &c. and that J. O. of, &c. is a material Witness to prove by whom the said Robbery was committed: These are therefore to require you to cause the said J. O. forthwith to come before me, or some other Justice of the Peace for this County, to give such Information and Evidence as he knoweth concerning the said Offence, that such farther Proceedings may be had therein as to Justice doth appertain. Given, &c.

The Condition of a Recognizance to appear and give Evidence against a Felon.

THE Condition of this Recognizance is such, That if the above-bounden D. P. shall personally appear at the next Assizes or general Gaol-delivery (or at the next General Quarter-Sessions of the Peace, to be held at, &c. for, &c.) for the County of S. and then and there give such Evidence as he knows against P. C. of, &c. concerning his felonious Stealing of one Silver Tankard, &c. out of the House of S. C. &c. on &c. last past, and do not depart thence without Leave of the Court, then, &c. or else, &c.

Examination.

THE Justices may examine Witnesses upon Oath; and by Virtue of the Statute of 2 & 3 P. & M. c. 10. they may examine the Felon likewise, but not on Oath. H. P. C. 262.

This Examination must be in Writing, and it must be certified * to the next Assizes, or else the Justice may be fined by the Judge. H. P. C. 262, 263.

It may be given in † Evidence at the Trial, but 'tis not sufficient to convict, unless the Accused confess at the Trial;

Y 4

should be sworn to the Examination, or the Justice

* If a small Felony then to the Sessions.

† Tho' the party is dead; but then the Justice's Clerk himself.

yet *Dalton* mentions a Conviction upon it without any further Evidence. *Dalton* c. 166.

And yet in the Case of *Tony Philips* and *Stubbs*, who were indicted for High Treason, it was resolved by all the Judges That if a Traitor is examined before a Justice of Peace, or Privy Counsellor, and confesseth the Treason, and should afterwards deny it at his Trial; yet two Witnesses, who can prove such Confession, are good Evidence against the Party himself, who made it at his Examination, but not against any other Person whom he then accused; and that in such Case there needs not two Witnesses to prove the Criminal guilty of Treason.

So in my Lord *Morley's* Case it was held, That if Witnesses examined before the Coroner were dead, or unable to travel, and Oath made thereof, such Examination might be read, the Coroner making Oath, That they are the same, and not altered.

2 And. 67.

Several Persons conspired, &c. to pull down Enclosures, and to provide Armour, &c. and to go to *London* and join with more; and this they confessed on Examination: The Question was, Whether they should be arraigned for this Offence, because they had confessed it already? And it was held they should, and that their Confession before the Arraignment might be given in Evidence against them. If upon Examination the Felon confesseth the Fact, the Justice should take his Name subscribed to his Confession.

H. P. C. 264.

And such Confession may given in Evidence with an Oath, before whom it was made.

Examination taken in one County, may be certified in another.

The Felon may be examined before he is committed, but not upon Oath, because *nemo debet seipsum accusare* (no one is bound to accuse himself).

His Examination, as well as that of the Witnesses, must be certified by the Justice to the next Assizes.

The Form of the Examination of the Felon.

THE Examination of T. R. &c. taken before me, H. P. Esq; one of his Majesty's Justices of the Peace for the County of S. on the 31st Day of March, &c.

The said T. R. being charged before me by S. C. of, &c. with the felonious Stealing out of the House of the said S. C. in, &c. on such a Day, &c. the following Goods, viz. &c. to the Value of, &c. he the said T. R. upon his Examination now taken before me, confesseth that, &c. or denieth that, &c.

The

The Examination of the Witnesses must be taken severally and upon Oath, thus :

The Examination of R. B. of, &c. taken upon Oath before me, H. P. Esq; ut prius, &c.

Excise.

SEE Tit. *Brewers* and the Stat. 10 *Geo.* That a Justice may empower by a special Warrant, and Oath made, &c. any Person to search by Night or Day with a Constable suspected Places, &c. See also 6 *Geo.* 2.

Execution. See Judgments.

IF Execution is respited by the Judge for six Weeks, and the Time expires, and then the Sessions is adjourn'd, and the Judge grants a farther Respite, 'tis good ; though by the Adjournment, the Commission of Gaol-Delivery is determined. *Dyer* 205.

Extortion.

IS an Offence, where an Officer by Colour of his Office takes Money, or any other Thing of Value not due, or more than is due, or before 'tis due : And in a large Sense, 'tis where any Person is oppressed by an extorting Power, or under a Pretence of Right. 1 *Inst.* 368. b.

Archdeacon. } Is guilty of this Offence, taking more than his Fees by Colour of his Office, or any Fees or Reward for Expedition, or exacting an Oath, or any other undue Thing.

Attorney, } Taking 1 *l.* 3 *s.* of his Client *Extorsive contra formam Statuti* (by Extortion against the Form of the Statute), which must be the Stat. of 3 *Jac.* 1. c. 7. which gives the Client Costs and treble Damages, where an Attorney demands by his Bill more than his due Fees and Disbursements ; the Question was, Whether this is to be recovered by Action or Information ; and by some Opinions an Information will lie. *Sid.* 434.

I remember an Indictment upon such an Account, but the Judge who tried the same would by no Means allow that such Indictment was good, and directed the Jury to acquit the Defendant; and now by the 2 Geo. 2. for the better Regulation of Attornies, the Party charged by any Attorney's Bill may have such Bill taxed, and the Courts are to award the Cost of Taxation according to the Event, to wit, if the Bill taxed be less by a sixth Part, the Attorney is to pay the Cost; but if not so, the Court may charge the Attorney or Client according to the Reasonableness or Unreasonableness of such Bill.

Brunden's Case
Cro. Car. 438,
448.
Jones 379.

Bailiff,

Of a Hundred, taking 50 s. *colore Officii* (by Colour of his Office), without expressing particularly for what: After Verdict this was held sufficient, by Reason of the Words *colore Officii*; but it had been otherwise upon Demurrer. *Sid.* 91.

Bailiff to a Sheriff, indicted at the Sessions for taking 20 s. of T. P. *Extorsive colore Officii* (by Extortion, by Colour, &c.) was committed, and pleaded, and was tried the same Day in Sessions and convicted; and upon a Writ of Error the Judgment was reversed, because a Man cannot be indicted and tried at the same Sessions. But the Damages are to be recovered by Action.

Taking more than 4 d. for an Arrest, forfeits treble Damages to the Party grieved, and besides 40 l. between King and Prosecutor, *per* 23 H. 6. c. 10. But the Jury must find the single Damages, and then the Justices may treble them. *Sid.* 91. The Law now allows more.

Clerk of Assize.

Information against him for taking more than his Fees, was ordered to be tried at Bar. *Sid.* 420.

Church-wardens,

Taking *colore Officii sui, falso, corrupte & extorsive* (by Colour of his Office, falsely, corruptly and extorsively, i. e. by Extortion), of T. P. a Silver Tankard for the Place of a Gallery-keeper in the Church; the Court would not quash the Indictment, but ordered it to be tried. *Sid.* 307.

Taking

Coroner, { Taking more than his Fees, or refusing to view the Body before he had 6 s. 8 d. for himself, and 2 s. for his Clerk, he was committed, &c. 3 Inst. 149.

Gaoler, ——— Taking more than his Fees.

Justice of the Peace, { He was convicted of Extortion, fined 1000 Marks, committed during the King's Pleasure, bound to his Good Behaviour for a Year, and ordered to acknowledge his Offence publickly at the next Assizes, and turned out of Commission.

Ordinary, { 'Tis Extortion in him to take any Thing for an Admonition or Probate of a Will, where the Goods of the Deceased are not of the Value of 10 Marks, or to take more than 3 s. 4 d. where the Goods exceed not 30 l. or to take more than 6 s. 8 d. when the Goods exceed 30 l. and are not of 40 l. Value; or to take above 10 s. when the Goods amount to 48 l. or above, or any Thing for a Mortuary where 'tis not payable by Custom. 21 H. 8. c. 6.

Sheriff, { Taking more than his Fees, or any Thing of a Constable for bringing a Felon to Gaol.
'Tis Extortion in him to take 60 l. to execute a Judgment in Dower, 1 Keb. 743. but if he is acquitted, no new Trial shall be had. 2 Keb. 404.

Spiritual Court, { Extortion there is punishable at Common Law. Palm. 318.

Two Men may be indicted jointly for an Extortion, because 'tis a Crime at Common Law, but Two cannot be jointly indicted for exercising a Trade, not being Apprentices, &c. because 'tis that which makes the Offence, and therefore of Necessity it must be several.

An Indictment against a Coroner for taking excessive Fees.

Suffex, to wit, { **T**HE Jurors, &c. That J. O. late of H. in the said County, Gent. on the thirtieth Day of December in the fifth Year of the Reign, &c. then being one of the Coroners of our said Sovereign Lord the King, in and for the said County at H. aforesaid in the said County, did by Colour of his said Office, and by Extortion, take for his Fee thirty Shillings

1 Hen. 8. c. 7;
The same Form may serve against a Bailiff, changing Coroner for Bailiff, &c.

Shillings of one T. P. in the said County, Gent. in and for the Execution of his Office of Coroner aforesaid, upon View of the Body of A. C. late of H. aforesaid, which said A. C. on the twenty-ninth Day of December aforesaid, at H. aforesaid, by Misfortune was killed by a Cart running over and upon his Head, to the great Contempt of our said Sovereign Lord the King, and contrary to the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

Against a Bishop's Register.

21 Hen. 8. c. 5.
Wide 3 lnt. 149.
Fine 10l. and
Imprisonment.

Suffex, to **T**HE Jurors, &c. That T. B. of L. in the said County, Gent. on the thirtieth Day of December in the fifth Year of the Reign, &c. being then Register to the Right Reverend Father in Christ, Thomas, by Divine Permission, then Bishop of Chichester, at L. in the said County, by Colour of his Office, did falsly, corruptly, and by Extortion, take of one J. O. of L. aforesaid, Barber, forty Shillings of lawful Money of Great Britain, for the Fee of him the said T. B. for Writing the Probate of the Last Will and Testament of one T. M. who died on the first Day of November last past at L. aforesaid within the Diocese of the said Bishop, when in fact the said Will was then and there brought to the said Register by the said J. O. wrote upon Parchment, and when all the Goods and Chattels, Rights and Credits of the said T. M. at the Time of his Death aforesaid, did not exceed the Sum of five Pounds, and when also the whole Writing of the Probate of said Will, so as is before related to be done by the said Register, did not contain in the Whole thirty Lines, of ten Thumbs Breadth in Length, to the great Contempt of our said Sovereign Lord the King, and contrary to the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Against Extortion in a Gaoler.

Suffex, to **T**HE Jurors, &c. That J. O. of the Parish of H. in the said County, on the thirtieth Day of December in the fifth Year of the Reign, &c. was taken upon Suspicion of having committed a certain Felony by T. R. Constable of the said Parish, by Virtue of a certain Warrant directed to the said T. R. under the Hand and Seal of R. B. then and yet one of the Justices of our Sovereign Lord the King, assigned to keep the Peace in the said County, and was on the same Day and Year committed by him the said R. B. to J. L. Keeper of the said Gaol of our said Sovereign Lord

Lord the King, under the Custody of him the said J. L. to be safely kept, upon Suspicion of the Felony aforesaid, and the said J. O. was detained in that Prison under the Custody of the said J. L. from the Time that he was committed to the said Prison for one Month from thence next ensuing, upon Suspicion of the said Felony; nevertheless the said J. L. in no wise regarding the Statute and the Penalty therein contained, did on the &c. at H. aforesaid in the said County, receive ten Pounds of lawful Money of Great Britain of the said J. O. for Ease and Favour in the said Gaol for the said Time, in Contempt of our said Sovereign Lord the now King, and against the Form of the Statute aforesaid, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

Indictment against a Bailiff of a Hundred, for taking Fees to excuse a Freeholder from appearing at the Assizes or Sessions.

Suffex, to **T**HE Jurors, &c. That J. T. late of L. in wit, the said County of Suffex, Yeoman, being Bailiff of the Hundred of H. in the said County on the seventh Day of May in the fifth Year of the Reign, &c. at L. in the said County, by Pretext and Colour of his said Office, did unjustly and by Extortion take and extort 5 s. of one T. R. one of the Freeholders of the said County, to excuse the said T. R. from appearing or attending at the Assizes that were then next to be held in and for the said County, when in Fact the said T. R. was not returned by the Sheriff of the said County in any Panel of Jurors, and also when indeed no such Sum of Money was due to the said J. T. for his Fee for excusing the Attendance or Appearance of the said T. R. at the Assizes aforesaid, to the bad Example of other Offenders, to the great Damage of him the said T. R. and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

Against an Informer for taking Money.

Suffex, to **T**HE Jurors, &c. That R. G. late of, &c. wit, in the said County, Yeoman, being now and for two Years last past a common Informer, on the seventh Day of May in the fifth Year of the Reign, &c. at H. in the said County, did receive and extort ten Shillings in ready Money of one J. R. of, &c. upon Pretence that he the said J. R. did use and exercise the Art or Mystery of a Baker, not being an Apprentice for the Space of seven Years, to the great Damage of

Fairs and Markets. False Tokens.

of him the said J. R. to the bad Example of other Offenders in such like Case, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

Fairs and Markets.

2 & 3 P. & M.
c. 7.

OWners of Fairs or Markets, not appointing a Toll-taker (where Toll is paid) or a Book-keeper, to sit there from Ten o' Clock in the Forenoon 'till Sun-set, forfeits 40 s. and the Toll-taker or Book-keeper, not delivering in one Day after the Fair, &c. unto the Owner, a Note of all Horses, &c. sold there, forfeits also 40 s. Forfeitures divided between the King and Prosecutor. And Justices at Quarter-Sessions may hear and determine the said Offences.

He who keeps a Fair or Market in a Church-yard shall be fined, *per* 13 E. 1. c. 6.

Fairs and Markets not to be kept on a Sunday. 1 Eliz. c. 2. 2 Jac. 1. c. 4. and the Lord of a Fair kept on a Sunday may be indicted at the Assizes or Sessions. 27 H. 6. 2.

A Court of Piepowder is incident to every Fair for Contracts and Batteries. 3 Cro. 168.

See Hay, &c. Horses.

False Tokens.

Persons convicted of obtaining any Money or other Thing, by Colour of any false Token or counterfeit Letters, shall suffer such Punishment as the Court shall adjudge, Death excepted, by 33 H. 8. c. 1. §. 2.

By the said Statute the Justices of Assize, or two Justices of the Peace (one being of the *Quorum*) may convene by Process, or otherwise, to the Assizes or Sessions, any Persons suspected of such Offence, and may commit or bail him, &c. See Counterfeiting, Tit. *Felony*.

Fees.

Bailiff. } Taking more than 4 *d.* for an Arrest, forfeits 40 *l.* 23 *H. 6. cap. 10.* and treble Damages to the Party grieved; the 40 *l.* to be divided between King and Prosecutor. *q.*

Bail-bond. — Taking more than 4 *d.* like Punishment. *q.*

Clerk of the Peace. } For inrolling a Bargain and Sale of Lands not exceeding 40 *l.* *per Ann.* 12 *d.* if it exceed that yearly Value, then 2 *s.* 6 *d.* and no more; and for a License or Recognizance for Badger, Drover, Lader, Kidder, and Registring it, 2 *s.*

Coroner. } May take 13 *s.* 4 *d.* of the Goods of the Party slain; and if he hath none, then he may take it of the Town where the Deceased was killed, if in the Day-time, and the Person who committed the Fact suffered to escape.

Gaoler. } If he take more than 4 *d.* of the Party committed, forfeits *ut prius*, as in the Case of a Bailiff.

		<i>l.</i>	<i>s.</i>	<i>d.</i>	
Justice of Peace.	<i>Ut dicitur</i> (as it is said),	For Recognizance of the Peace.	0	2	0
		For Recogn. to bail a Prisoner	0	2	0
		For a <i>Superfedeas</i> of the Peace	0	2	0
		Warrant of the Peace	0	2	0
		Release of the Peace	0	2	0
		Warrant ———	0	0	4
		Recogn. of an Ale- house-keeper	0	1	0

Mayors. } Sealing Bushels and other Measures 0 0 1
 Sealing an Hundred Weight, and proportionably. } 0 0 1
 And if he takes more, forfeits 40 *s.* between the King and the Party grieved; which Default Justices of the Peace have Power to hear and determine. 7 *Hen. 7. c. 3.*
 And by 11 *H. 7. c. 4.* Two Justices, *Quorum unus*, to hear and determine the Defaults of Mayors, &c.

Taking

Fees. Felo de se.

Pounding.	{ Taking above 4 <i>d.</i> for pouding of a Distress, forfeits 5 <i>l.</i> to the Party grieved. 1 & 2 P. & M. c. 12.
Sheriffs.	{ For arresting 20 <i>d.</i> If he takes more, forfeits as a Bailiff, <i>ut prius.</i> q.

3 Geo. 1. c. 15. Taking more than 12 *d.* for every 20 *s.* of the yearly Value of the Lands exceeding 100 *l.* *per Ann.* and 6 *d.* if under for executing an *Habere facias Possessionem aut seisinam*, (a Writ to give Possession or Seisin of Land); or taking Poundage for executing a *Ca' Sa'* or charging one in Execution for a greater Sum than really due to the Plaintiff; and being convicted thereof, shall be guilty of Extortion, and shall forfeit treble Damages to the Party grieved, and double the Sum extorted, and 200 *l.* more; one Moiety to the Crown, the other to the Prosecutor. See *Sheriff*.

Felo de se.

IS one who committeth Felony, by murdering himself voluntarily.

It has been the Opinion of learned Men, That a Person, who is *Compos mentis*, cannot be guilty of so much Malice towards his Person, which may occasion him wilfully to kill himself, because naturally the Intentions of Men aim at what is good for themselves, and at what conduceth to their own Preservation; and therefore it is to be presumed, that where a Man kills himself, he is not *Compos mentis* (of sound Mind and Memory).

1 Rep. 99. b.
100. in Shelly's
Case.

If a Man who is *Non Compos* giveth himself a mortal Wound, and before he dieth becomes of sound Memory, and afterwards dies of that Wound, now though he was *Compos mentis*, when he died, yet because the original Cause of his Death was the Wound which he gave himself whilst he was *Non Compos*, he shall not be a *Felo de se* (Self-Murderer), nor forfeit his Goods, because the Death must have Respect to the original Act, which was the Wound.

The Person, who is guilty of this Offence, must be,

1. Of the Age of Discretion.
2. *Compos mentis* (of sound Memory).
3. The Act must be voluntary.
4. Death must ensue within a Year and a Day after the Stroke or Wound; otherwise no Forfeiture of Goods, &c. incurrerth.

But

But in some Cases the Act may be deem'd in Law voluntary, tho' not intended by the Party; as if I am assaulted, and draw my Sword to defend myself, and happen to fall down, and the other pursuing his wicked Intentions to destroy me, falls upon my Sword; and kills himself, he is *Felo de se*.

But if I stand upon my Defence without being assaulted, and am only in Danger thereof, and another runs upon my Sword and kills himself, he is not *Felo de se*.

This must be by the Oath of twelve Men before the Coroner, *super visum corporis* (upon Sight of the Body); and when his Inquisition is returned and filed, 'tis not traversable. Conviction.
Sid. 30. 1 Vent. 278. contra.

If the Body cannot be found, &c. then the Inquiry may be before the Justices in the Sessions; and this is traversable. 3 *Inst.* 35.

So if the Inquiry be in *B. R.* in the same County, 'tis traversable by Executor or Administrator.

And till Conviction, no Goods are forfeited.

The Coroner's Inquest found, That *seipsum felonice submersus fuit* (he feloniously drowned himself), he was ordered to attend *B. R.* to amend it; for it should be *jecit seipsum in aquam*, &c. (he threw himself into the Water).
Sid. 259. See before, Title *Coroner*.

If a Presentment is made before a Coroner, that a Man 2 *Leon.* 100, was *Felo de se*, and that he had Goods in the Possession of S. this Presentment must be certified into *B. R.* upon which Process out of the Crown Office issues against S. and it is continued till he is outlawed.

This is of all the Goods and Chattels which the Party Forfeiture. had at the Time of the Stroke given, or any Time since; for it relates to that Time, and not to the Death.

And yet there is an Opinion in my Lord *Dyer*, That if *Dyer* 261. p. 31. Money is owing to one who is *Felo de se*, upon simple Contract, and not on *Specialty*, the Debt is not forfeited; because such Debtor may wage his Law with the King.

A Debtor was bound with Sureties to pay the Money, *Dyer* 160, and made a Bargain and Sale to the Sureties, of Goods to the Value of the Debt, to indemnify them; in which Deed there was a Covenant, That if the Debtor saved them harmless, that the Bargain should be void, and that in the mean Time he should have the Use of the Cattle: Before the Debt became due, the Debtor killed himself, and the Sureties seized the Cattle; but it was held, the Lord Almoner should have them, or the Money for which they were sold, tho' the Property was in the Vendees; but then he ought to discharge them from the Debt.

Not granted but where a Misdemeanor is in the Coroner. *Melins Inqu.*
Vent. 182, 352. rend'.

Pardon.

Of all Offences, &c. except Murder; a *Felo de se* is not under this Exception, because there is a Difference between Killing one's self and another; for the first is against the Law of Nature, the other against the *Mosaical Law*, by which Vengeance is to be taken against the Manslayer; but no Vengeance can be had against one who is *Felo de se*; therefore his Goods, &c. are forfeited to the King, for depriving him of the Benefit of a Subject. *Levinz*, 1 Part 8 King and Ward.

An Inquisition taken before a Coroner upon the View of the Body.

Suffex, to **A**N Inquisition indented taken at L. in the said
 wit, County, on the 31st Day of December in the
 9th Year of the Reign, &c. before Alexander Luxford, Gent
 one of the Coroners of our said Sovereign Lord the King in the
 County aforesaid, upon the View of the Body of one W. G. of
 H. in the said County, Labourer, there lying dead, upon the
 Oath (of the Jury) who say upon their Oath, that the said
 W. G. on the 29th Day of December in the 9th Year aforesaid,
 about five of the Clock in the Afternoon of the same Day,
 not having God before his Eyes, but being seduced by the Instigation
 of the Devil, being alone in a certain House of one R. N.
 Gent. at H. in the said County, did then and there tie one End
 of a Leather Girdle (of the Price of One Penny, which he then
 and there held in his Hands), about his Neck, and did bind the
 other End thereof about a Beam, and did then and there voluntarily
 and feloniously suffocate, strangle and hang himself; and
 so the Jurors aforesaid say upon their Oath, that the said W. G.
 did then and there voluntarily and feloniously, and as a Felo de
 se (one who murders himself), murder himself, against the
 Peace of our said Sovereign Lord the King, his Crown and
 Dignity. And that the said W. had no Goods or Chattels,
 Lands or Tenements. In Witness whereof, as well the said
 Coroner as the Jurors aforesaid have set their Seals to these
 Presents. Dated the Day, Year and Place abovementioned.

If it be for cutting his Throat, then add after the Words
 (being seduced by the Instigation of the Devil)

At L. aforesaid in the said County, did then and there feloniously,
 voluntarily, and of his Malice aforethought, make an Assault in
 and upon himself, then and there being in the Peace of God, and
 our said Sovereign Lord the King, and that the said W. G. did
 then and there feloniously, voluntarily, and of his Malice afore-
 thought strike himself upon his Throat, with a certain Knife of
 the

the Value of One Penny, which the said W. G. then held in his Right Hand, then and there giving to himself one mortal Wound with the said Knife upon his Throat, of the Breadth of four Inches, and the Depth of one Inch, of which said mortal Wound the said W. G. at L. aforesaid in the said County languished, and languishing lived from the said 29th Day of December in the 9th Year above mentioned, to the first Day of February then next ensuing, which said W. G. on the said 1st Day of February in the 9th Year above mentioned at L. aforesaid in the said County, died of that mortal Wound, and so, &c.

If it be upon some sudden Sicknes or Distemper.

Who say upon their Oath, That on the thirty-first Day of December in the ninth Year, &c. at H. aforesaid in the said County, it so hapned, that the said W. G. from the fifth Day of December last past to the tenth Day of the said Month at H. aforesaid was sick of a Fever, on which said tenth Day the said W. G. about Eight of the Clock in the Afternoon of the same Day then and there died, with the said Fever and Visitation of God, and the Jurors aforesaid say, that the said W. G. died of no other Disease, Sicknes, or Infirmitie, but that this is the Cause of his Death, and no otherwise. In Witness, &c.

For killing another in his own Defence.

Suffex, to **A**N Inquisition, &c. who say upon their Oath, wit, *That whereas one G. L. late of, &c. Gent. at L. aforesaid, on the thirty-first Day of December in the ninth Year, &c. was in the Peace of God and our said Lord the King, that the said H. B. about two of the Clock in the Afternoon of the same Day, did come and of his Malice aforethought did then and there make an Assault upon him the said G. L. and did then and there endeavour to have beaten and killed him, by continuing the Assault aforesaid from the House of one W. B. in L. aforesaid, to a certain Place called, &c. in the said County, and the said G. L. seeing that the said H. B. was so maliciously disposed, fled to a certain Wall in the said Place, called, &c. and could not escape from thence for fear of his Death, and so the said G. L. continued to defend himself in Preservation of his Life against the said H. B. and in his own Defence did strike the said H. B. upon the right Part of his Breast with a certain Sword of the Price of one Shilling, which the said G. L. then and there held in his Right Hand, then and there giving to the said H. B. one mortal Wound of the Breadth of one Inch, and Depth of three Inches, of which said mortal Wound the said H. B. at L. aforesaid in the said County, languished,*

Felo de se. Felony.

and lived languishing from the said thirty-first Day of December to the fifth Day of January from thence next ensuing, which said H. B. on the said fifth Day of January in the ninth Year above-mentioned, at L. aforesaid in the said County, died of that mortal Wound, and so the said G. L. did then and there kill him the said H. B. in his own Defence. In Witness, &c.

Felony. See Burglary, Examination, Larceny, and Outlawry.

MY Lord Coke tells us, this Word is derived from the Latin Word *Fel*, or from the old Saxon Word *Fell*; the one signifying Gall, and the other Fierce; and his Reason is, because either of these Words are suitable to the Crime, which is always intended to be done with a bitter or fierce Mind.

This makes me reflect on what my Lord *Verulam* wrote of that great Lawyer, *viz.* That when he spake in the Law, (which he calls his own Element) he had no Equal; but when he wandered (as he tells us he often did) he was very much out of the Way: And this appears by his Derivation of this Word, and in many more Instances which I could mention.

The learned Sir *Henry Spelman* gives us a different, but a true Account of this Word, *viz.* That it is derived from the Saxon Word *Feab*, which we now call *Fee*, and which then signified a Reward or Estate; and from the German Word *Lon*, which in *English* is *Price*; so that this was a Crime which was punish'd with a Price (that is, the Loss) of his Estate.

For in those Days there was pecuniary Punishment for all Crimes, which was abolish'd by *H. 1.* and instead thereof he appointed Hanging for Felony.

Felonies are, { By Common
 or
 By Statute } Law.

Felonies at Common Law are,

(1.) Against the Life of a Man.	{	Chance-medley.
		<i>Deodand.</i>
		<i>Felo de se.</i>
		Manlaughter.
		Manlaughter <i>ex necessitate.</i>
		<i>Se defendendo.</i>
	{	Murder.

Larceny.

- | | | |
|------------------------------|---|---------------------------------|
| (2) Against the Goods. | } | Larceny.
Robbery.
Piracy. |
| (3) Against the Habitation. | } | Burglary.
Burning. |
| (4) Against publick Justice. | } | Breach of Prison. |

Felonies by Statute are,

Stealing of Goods which by Agreement he is to use, or shall be let to them in Lodgings. 3 & 4 W. & M.

Delivering Silk by a Throwster to a Man to work, and he steals it, this was Felony before that Statute: So the Delivery of Plate to a Butler, or Sheep to a Shepherd, and they steal them; because the Property was still in the Owner. *Kelynge* 35.

Apprentices.	{	There shall be a Duty of 6 <i>d</i> . in the Pound under 50 <i>l</i> . and 1 <i>s</i> . if above 50 <i>l</i> . paid for putting out Apprentices; and all Indentures shall be stamp'd with Stamps denoting these Duties; and Forging either of them is Felony without Benefit of Clergy. 8 A c. 9.
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Armour.	{	Employing the King's Armour, Munition Ordnance, to the Value of 20 <i>s</i> . Prosecution must be within a Year; loseth Lands but during Life; no Corruption of Blood; the Wife shall have Dower. 31 Eliz. c. 4. This cannot be determined in Sessions.
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Assembly.	{	An unlawful and rebellious Assembly of any Persons to the Number of Twelve, or above 1 M. c. 23. expir'd.
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Bail.	{	Acknowledged in the Name of another not privy or consenting. 21 Jac. 1. c. 26. But if taken <i>de bene esse</i> (conditionally) at a Judge's Chamber, and not filed, no Felony. <i>Sid.</i> 90.
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Felonys.

- Bastard. } Concealing the Death of it, unless the Mother proves by one Witness it was dead-born. 21 *Jac.* 1. c. 27.
- Buggery. } With Man or Beast, there must be a *Penetratio & Emissio*, &c. 25 *H.* 8. c. 6. revived by 5 *Eliz.* c. 7. No Clergy.
- Burglary. — *Vide* Robbery, and *antea*.
- Burning. } Rick or Stack of Corn, Hay or Grain, in the Night time, or Barns or Outhouses. 21 & 22 *Car.* 2.

But where a Man was indicted, for that he being possessed of an House, did *felonice* set it on Fire, with an Intent to burn his Neighbours Houses; this was adjudged no Felony, but a Trespass. *Kelynge* 29.

- Chafes. } Hunting in them in the Night-time with painted Faces. 1 *H.* 7. c. 1. *Vide* the Black Act.

- Cloth. — Stolen from Tenters in the Night. 22 *Car.* 2.

- Cloaths. } Tearing, cutting, spoiling, burning or defacing Cloaths or Garments in the Streets, Felony, and to be transported for seven Years. 6 *Geo.* 1. c. 23.

- Coach-house. } Stealing Goods out of it to the Value of 5 s. tho' not broke open, or assisting any Person to do it either by Day or Night. 10 & 11 *W.* 3. *H.* 5. c. 1. 2 *H.* 6. c. 9. Clergy.

- Coin, &c. } Blanching Copper or Silver for Sale, or mixing blanch'd Copper with Silver, or knowingly buying or selling it, or offering it to Sale; or any malleable Composition of Minerals or Metals heavier than Silver, and looking like Standard Gold; paying or putting off counterfeited mill'd Money, or unlawfully diminished (and not cut in Pieces) at a lower Rate than its Denomination doth import.

No Corruption of Blood, nor Loss of Dower: Prosecution must be within three Months, &c. continue till next Sessions of Parliament. 8 & 9 *W.*

Damaging

Corn.

{ Damaging it when in Granaries for Exportation, or a second Offence in violently hindring the Buying or Carrying of Corn, is Felony by 11 *Geo. 2. c. 22. §. 2.*

{ Exchequer-Bills, or any Indorsement, or tendring in Payment such forged Bills with forged Indorsements, or demanding to have the same exchanged for Ready Money, knowing the Bill or Indorsement to be forged, is Felony without the Benefit of the Clergy. 7 *Ann. c. 7.* See 2 *Geo. 2. c. 25. §. 1.*

Counterfeiting.

{ Or forging or causing and assisting in the Forging or Counterfeiting any Letter of Attorney or Instrument to transfer any Share in the Capital Stock of any Body or Bodies Politick or Corporate by Act of Parliament, or receiving any Annuity or Dividend attending the said Shares, or counterfeiting the Name of any Proprietor, or who shall receive any Proprietor's Money as if he was the true Proprietor, is also Felony without Benefit of Clergy. 8 *Geo. 1. c. 22. §. 1.*

{ Of any Acceptance of any Bill of Exchange, or the Number or Principal Sum of any accountable Receipt for any Note, Bill, or other Security for Payment of Money, or any Warrant or Order for Payment of Money or Delivery of Goods with Intention to defraud any Person whatsoever, or shall utter or publish as true, any false, altered, forged or counterfeited Acceptance of any Bill of Exchange or accountable Receipt for any Note, Bill, or other Security for Payment of Money, or Warrant or Order for Payment of Money, or Delivery of Goods, with Intention to defraud any Person, knowing the same to be false, &c. shall be guilty of Felony. No Clergy. 4 *Geo. 2.*

Deed.

{ Enrolled in the Name of another not privy or consenting. 21 *Jac. c. 26.*

Eyes.

{ Putting them out, 22 & 23 *Car. 2.* or cutting out the Tongue; no Clergy.

Felony.

- Egyptians.** { Above fourteen Years of Age remaining here two Months. 1 & 2 *Pb. & M. c. 4.* 5 *Eliz. c. 10.* no Clergy.
- Escape.** { Prisoner suffer'd voluntarily to escape, being under an Arrest for Felony, 'tis Felony in the Officer.
- Exchequer-Bills.** { To counterfeit or forge them, or to demand Money on them, knowing them to be counterfeit. 8 & 9 *W.*
- Fine.** { Acknowledging it in the Name of another not privy or consenting. 21 *Jac. 1. c. 26.* Sessions have no Jurisdiction of this Offence. See *Counterfeits.*
- Forging.** { A Deed, after a former Conviction for the like Offence. 5 *Eliz. c. 14.*
After 24 *June 1734.* Persons convicted of Forging or Altering the Acceptance of Bills of Exchange, or the Sums of accountable Receipts, &c. shall suffer Death as Felons without Benefit of Clergy. 7 *Geo. 2.*
- Forest.** { Hunting in it unlawfully by Night with painted Faces. 1 *H. 7. c. 1.*
- Hawks.** { Stealing them, or finding or concealing them, and not bringing them to the Sheriff to be proclaimed. 37 *Ed. 3. c. 19.* Clergy.
- Horses.** { Destroying or killing them in the Night-time; but wounding them only, forfeits treble Damages.
- Hunting.** { *Vide Chases, Forests, Warrens.* See *Deer-stealing and Hunting.*
- Jesuit.** { Receiving, retaining, or maintaining him knowingly. 27 *Eliz. c. 2.* No Clergy.
- Inlusting** { His Majesty's Subjects in the Service of a foreign Prince, is Felony without Benefit of the Clergy. 9 *Geo. 2. c. 30. §. 1.*
- King.** { Imagining or conspiring to kill him, or any of his Counsel. 3 *Hen. 7. cap. 14.* No Clergy.
- Limb.** { Cut off or disabled, with an Intention to maim or disfigure the Person. 22 & 23 *Car. 2.* No Clergy. *Coventry Act.*

Lottery.

Forging or Counterfeiting a Lottery-Ticket is Felony without Benefit of Clergy. 8 A. c. 4.

Forging or Counterfeiting standing Orders made and exchanged for Lottery-Tickets, or Receipts to be given out in Pursuance of the Lottery-Act, 9 A. and another Act, 9 A. for raising two Millions; and the Lottery-Act, 10 A. and another Act, 10 A. for raising 1,800,000 l. upon certain Funds; or altering the Number or principal Sum of any Order, or counterfeiting the Hand of any Person to such Order, &c. is Felony.

Maimed.

—Vide Limb.

Marrying.

(1.) A second Husband or Wife, the first living; but then the Man must be above Fourteen, and the Woman above Twelve; if under that Age and married, and disagreeing afterwards, may marry again.

(2.) Either of them being absent above seven Years beyond Sea, though Notice; but if in England, must not have Notice that the Party is living.

(3.) Divorce *à mensa & thoro* (from Bed and Board) may marry: As *causa Adulterii* (for Adultery), which was *Middleton's Case*; *causa Sævitie* (for Cruelty), which was *Rook's Case*.

(4.) After a Sentence of Nullity in the Ecclesiastical Court; in these three last Cases may marry again. 1 Jac. 11. Clergy.

Mill'd Money.

} Vide Coin.

Money.

—False imported. 17 Ed. 3.

Nose.

{ Slitting or cutting it. 22 & 23 Car. 2. No Clergy.

Ordinance.

—Vide Armour.

Poisoning.

{ Wilfully Poisoning, if the Party die within a Year and a Day. 1 Ed. 6. c. 12.

Popish Priest.—Vide Jesuit.

Prison.

—Breaking it by a Felon. 3 Hen. 7. c. 14.

Incorrigible Rogues breaking out of the House of Correction is Felony, by 13 Geo. 2. c. 24. §. 10.

Un-

Privy Coun-
sellor.

Unlawfully attempting to kill him, or he who shall unlawfully assault and strike, or wound a Privy Counsellor when in Execution of his Office; and being convicted thereof, is a Felon, without Benefit of Clergy. 9 *A. c.* 16.

This was Felony at Common Law; but by the Statute of *W. 1. c.* 13. made a Misdemeanor only, punishable by Fine and Imprisonment: But ten Years afterwards, by the Statute of *W. 2. c.* 34. it was made Felony again.

Rape.

If the Woman is under ten Years, though she consent; *per* 18 *Eliz. c.* 6. If above ten Years, and not consenting to do the Act, tho' she doth consent after 'tis done.

But on this subsequent Consent the Husband may appeal. 6 *Rich. 2. c.* 6. No Clergy. 18 *Eliz. c.* 7. upon Conviction, Confession, or Outlawry.

Dyer 304.

And two other like Cases in the Margin; one of a married Man, who was 60 Years old for ravishing a Girl of seven;

and Proof by Inspection of Surgeons. In the other the Defendant was acquitted of the Rape, for upon Inspection it was found that he had not penetrated; but afterwards being indicted for an Assault, was found guilty, fined and pilloried.

In *Michaelmas* Term 14 *Eliz.* a *Scotchman* was indicted for a Rape upon a Girl of seven Years old, and no more, and upon the Evidence of credible Witnesses, was found Guilty; but the Court very much doubted whether the Fact could be committed upon such a young Girl: And this was the Reason of making that Statute 18 *Eliz.* declaring it Felony to ravish a Girl under ten Years of Age, tho' consenting to the Act.

Recovery.

Acknowledging it in the Name of another, not privy or consenting. 21 *Jac. 1. c.* 26.

Recognizance.—*Vide* Recovery.

Record.

Stealing them. 8 *Hen. 6. c.* 12. Clergy.

Sessions have no Jurisdiction of this Offence.

Of a Prisoner taken out of any pretended privileged Place, and he who made the Rescous not paying 500 *l.* within a Month after Conviction, must be transported; and if he return within seven Years, 'tis Felony. 8 & 9 *W.*

Rescous.

Riotously rescuing Offenders in Retailing Spirituous Liquors, or assaulting Informers, Felony. 11 *Geo. 2. c.* 26. §. 2.

Robbery.

House, Barn or Stable, in the Day-time, and taking in Value of 5 *s.*, tho' no Body within, and breaking in the Night-time, and putting the Owner, &c. in Fear. 39 *Eliz. c.* 15.

Subjects

Sea and Sea-Subjects in passing over the Sea to a Foreign
man. } Prince, in order to serve him. 3 *Jac. c. 4.*

Captains and Mariners belonging to Ships destroying the
same, to the Prejudice of the Owners and Merchants, shall
suffer Death as Felons. 1 *Ann. c. 9.*

Servants a-
bove 18
Years old.

{ Other than Apprentice, going away with or
imbeziling the Goods of his Master, in
Value 40*s.* delivered to him, &c. 21
Hen. 8. c. 7. After Decease of his Master,
spoiling Goods, &c. 33 *H. 6. c. 1.* and
not appearing in *B. R.* upon Proclamation;
he hath Clergy by the Statute of 1 *Ed. 6.*
c. 12.
{ Receiving Master's Rents, and going away,
not within the Statute.

If I deliver a Bond to my Servant to receive 20*l.* which
he receives, and goes away with the Money; this is not
within the Statute, because a Bond is not properly Goods, but
a Chose in Action. So if I deliver Goods to my Servant to
sell in a Market; which he doth, and runs away with the
Money; it is not within this Law, because he had not the
Money by my *Delivery*: But if one Servant delivers Goods
to another Servant, and he runneth away with them, this is
Felony, because the Delivery of the Servant is the Delivery
of the Master. *Dyer 5.*

Sheep.

{ Sending them beyond Sea, after a former
Conviction. 8 *EL. c. 3.* Clergy. Destroy-
ing or killing them in the Night-time.
22 & 23 *Car. 2. c. 7.*

{ Stealing Sheep or other Cattle, or killing
them with Intent to steal any Part of the
Carcaffes, or assisting therein, is Felony with-
out Benefit of Clergy. 14 *Geo. 2. c. 6. §. 1.*

Ship.

{ If any Owner, Captain, Master, Mariner,
or other Officer, belonging to a Ship, shall
after 24 *June 1718.* willfully cast away,
burn or destroy the Ship, or direct, or pro-
cure the same to be done, to the Prejudice
of any Person who shall underwrite any
Policy of Insurance thereon, or of any Mer-
chant that shall load Goods thereon, he
shall suffer Death. 4 *Geo. 1. c. 12.*

Breaking

Felony.

Shop.

Breaking it in the Day-time, and taking to the Value of 5 s. 3 *£* 4 *W.* & *M.* Though he doth not break it in the Day-time, yet if he take the Value of 5 s. 11 *Will.*

Soldier.

Wandering. 39 *Eliz. c.* 17. No Clergy. Departing from a Captain without Leave. 18 *H. 6. c.* 19. 2 *Ed. 6. c.* 2. Clergy.

Officer or Soldier out of *Great Britain*, and raising a Mutiny in the Army, or refusing to obey a Superior Officer, or resisting any Officer in the Execution of his Office, or striking, drawing, or offering to draw or lift up any Weapon against his Superior Officer, shall be guilty of Felony. 7 *A. c.* 4.

Any Soldier raising a Mutiny, or refusing to obey his Superior Officer, or resisting, &c. or striking, &c. shall suffer as a Felon, being convicted: The said Felony to be tried in *B. R.* or before Commissioners assigned by the Crown. 10 *A. c.* 10.

Stable.

Stealing Goods in Value 5 s. out of it, tho' not broke open, or assisting to do it by Day or Night. 10 *£* 11 *Will.*

Stamps.

Counterfeiting or selling Vellum, Paper, &c. with such counterfeit Stamp. 9 *£* 10 *W.* No Clergy.

Any Person *causing or procuring* any Stamp or Mark to be forg'd or counterfeited, resembling any Mark or Stamp used for the Stamp-Duties, or *causing or procuring* any Vellum, Parchment, or Paper to be marked with such counterfeit Stamp, shall be adjudged, as if he had actually done it himself, &c. Felony; no Clergy. 6 *Geo. c.* 21.

Stealing.

Any Goods, which by Contract or Agreement the Party was to use; Felony. 3 *£* 4 *W.* & *M.* now made perpetual *per* 6 *£* 7 *W.*

Any Bonds, Notes, &c. Felony by 2 *Geo. 2.* expired; revived by 9 *Geo. 2. c.* 18. §. 1.

Any Lead, Iron Bar, Iron Gate, Iron Paliado or Iron Rail, being fixed to any Dwelling-house, Out-house, Coach-house, Stable or other Building, or fixed in a Garden, Orchard, Court-yard, or Fence belonging to such Building, shall be guilty of Felony, and be transported for seven Years; and all Persons assisting or buying the same, knowing them to be stolen, are liable to the same Punishment. 2 *Geo. 2.*

Acknow-

Statute.	{ Acknowledging it in the Name of another, not privy or consenting. 21 <i>Jac.</i> 1. c. 6.
Tongue.	{ Cutting it out maliciously. 5 <i>H.</i> 4. c. 5. 22 & 23 <i>Car.</i> 2. A Rogue, and he returning without License. 39 <i>Eliz.</i> c. 4. 1 <i>Jac.</i> 1. c. 7. 25. Clergy; if burnt, no Clergy. Of Silver. 17 <i>Ed.</i> 3. Clergy
Transporting	{ Escaping before Transportation, or returning from <i>America</i> before the Time expired, for which a Felon was order'd to be transported. No Clergy. 6 <i>Geo.</i> c. 23. Eight or more hindring, wounding, &c. Officers of Customs in Execution of their Duty, Transportation for seven Years, returning within that Time, Felony. No Clergy. 6 <i>Geo.</i> 1. c. 21.
Warehouse.	{ Breaking it in the Day-time, belonging to a Dwelling-house, and taking to the Value of 5 s. 3 & 4 <i>W. & M.</i> tho' not actually broken, &c. 11 <i>Will.</i> No Clergy.
Warren.	{ Hunting in it in the Night-time with painted Faces. <i>Vide</i> Foreits.
Watermen.	{ Felony in them to take in too great a Number of Persons when a Passenger is drowned. 10 <i>Geo.</i> 2. c. 31. §. 8. between <i>Gravefend</i> and <i>Windfor</i> .

In the first Degree.

Witchcraft.	{ 1. By Invocation or Conjurat[i]on of Evil Spirits.
	{ 2. Consulting, entertaining or employing them.
	{ 3. Taking up a dead Person to be employed, tho' not actually used, in Charm or Witchcraft.
	{ 4. Doing any Witchcraft, Inchantment or Charm, &c. whereby any Person is killed, destroyed, consumed, or lamed. No Clergy. 1 <i>Jac.</i> 1. c. 12.

In the second Degree.

By taking upon them by Inchantment, Charm, &c. to tell where Treasure is, or where Goods lost, &c. may be found, or to provoke unlawful Love, or destroying Goods
or

Witchcraft.

or Cattle, or using Witchcraft to hurt any Person, though not done: The first Offence is Imprisonment for a Year, and Pillory; and being convicted thereof, and receiving Judgment, and offending again, 'tis Felony. 1 Jac. c. 12.

Dr. Lamb was indicted, for that he used *quasdam malas & execrabiles & diabolicas Artes* (certain evil, execrable and diabolical Arts); and the Indictment was quash'd, because there was not a Word in it which signified Witchcraft; it may be express'd by the Word *Incantatio* (Witchcraft). *Latch* 156.

The Notion of Witchcraft seems to have taken a new Turn, and is pretty much exploded in this Kingdom; it was made Felony by the 33 H. 8. but this Statute was soon repealed, to wit, in the first Year of *Edw. 6.* however, in the fifth Year of *Queen Eliz.* another Act was made, reciting, That since the Repeal of the said Statute many fantastical and devilish Persons had devised and practised Invocations and Conjurations of evil and wicked Spirits, and had used and practised Witchcrafts, Inchantments, Charms and Sorceries, to the Destruction of the Persons and Goods of their Neighbours, &c. It was therefore made Felony where any Person was killed or destroyed by such Practice; and where any Goods or Chattels should be destroyed, wasted or impaired, for the first Offence Imprisonment for a Year, and once a Quarter to stand upon the Pillory six Hours; and for the second Offence, Death; and lastly, in Case such Practice was to tell, &c. where any Gold, Silver, or Goods stolen might be found, or where the same was used to provoke unlawful Love, or to hurt or destroy any Person in Body or Goods, the first Offence Imprisonment for one Year, and once a Quarter to stand on the Pillory for six Hours, &c. and being a second Time convicted forfeited all his Goods and Chattels, and was to be imprisoned for Life; this Statute was utterly repealed by the 1 Jac. 1. c. 12. but then that Statute was made for the more severe punishing such Practices, which see above.

The last Person, that I have heard was indicted on the last mentioned Statute, was *Jane Wenham* of *Walkern* in *Hertfordshire*, who was tried and convicted for Sorcery and Witchcraft at *Hertford* Assizes, in the Year 1712, before Mr. Justice *Powel*; but that good Judge knowing the Evidence not sufficient to support the Charge of Witchcraft against her, (tho' obliged to condemn her) took Care she should not suffer; and *Queen Anne*, at his Request, was pleased to grant her a Pardon. She was a little neat old Woman, and lived afterwards in the Church-yard in *Hartingfordbury* in the same County.

And

And now by the 9 Geo. 2. this Statute of 1 Jac. stands repealed, except such Part which repeals the last Clause of 5 Eliz. so that that Clause being revived, according to this Maxim, viz. by Repealing of a repealing Statute the first Statute is revived; and this relating to a Clause only, that Clause is revived, and is the Law now in Being, and is chiefly pointed at a Set of idle People called Gypsies, who travel the Countries to deceive the innocent.

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|-------------------------|--|
| Woman. See Title Woman. | <p>Taken away against her Will, and marrying her; but then she must have Lands or Goods, &c. or be an Heir apparent, and must be married or defiled. 3 H. 7. c. 2.</p> <p>Taking in one County and marrying in another, Trial must be where married; it cannot be in Sessions.</p> <p>Privy to Marriage, and not to the Force, Not guilty; marrying with Consent, but under the Force; Felony. 39 Eliz. c. 2. No Clergy.</p> |
| Wood and Coppice. | <p>Maliciously setting on Fire, burning, or causing to be burnt, any Wood, Under-wood or Coppice, or any Part thereof; Felony. 1 Geo. c. 48.</p> |
| Wreck. | <p>Any Person making Holes in the Bottom, Side, or in any Part of the Ship, or stealing any Pump, or doing any Thing tending to the Loss of the Ship, shall be a Felon without Benefit of Clergy. 12 A. c. 18. See Tit. Wreck.</p> <p>By 4 Geo. 1. c. 12. §. 1. the above Act of the 12 of Q. Anne, is made perpetual, and if any Mariner wilfully cast away, burn, or destroy his Ship, or procures the same to be done to the Prejudice of Persons insuring, shall suffer Death. See 9 Geo. 2.</p> |

Where a Felon steals Goods and hides them, and afterwards 5 Rep. 107.
flies for the Felony, those Goods are not forfeited as *Waifs* Foxley's Case.
in Law, because *Waifs* are properly those Goods which the
Felon hath about him, and which he leaveth, being closely
pursued, that he may more readily make his Escape; but
stolen Goods which he hides, may be taken by the Owner
where-ever he finds them.

The Indictment for a Felony in stealing Goods must be,
Quod felonice cepit & asportavit (that he feloniously took and
carried away). Now if Goods are deliver'd to a Carrier to
carry to L. and he carrieth them to another Place, and there
converteth them to his own Use, this is Felony; for though

it cannot strictly be said, that he *Felonice cepit* (feloniously took) those Goods, yet the Carrying them to another Place, and there disposing them to his own Use, sheweth that he always intended to steal them, and not to take upon them the Contract or Agreement of the Owner.

So if one come to a Market pretending to buy a Horse, and the Owner giveth him Leave to ride the Horse to try his Paces, and he rideth away; this is Felony: So if I deliver Goods to a Porter to carry to such a Place, and he carrieth them to another Place, and there openeth and disposeth of them; this is Felony.

The Law is the same if the Goods were carried to the Place appointed, and then imbezilled; because when they are brought to that Place the Contract is determined, and the Possession is revested in the Owner, and so being taken away afterwards, 'tis Felony. *Kelynge* 82, 83.

Raym. 276.

Upon an Indictment of Felony the Jury found that the Defendant came to the Shop of A. C. and asked to see two laced Cravats, which she shewed, and delivered them into his Hands; then he asked the Price, and she told him, so much; he offer'd her Half the Money, but ran away with the Goods in her Sight: Adjudged *Felony*, because the subsequent Act in running away, shews his Intention to take the Goods *felleo animo*, and though they were delivered to him by the Owner, yet in Law they were not out of her Possession, because the Contract was not perfected, and by Consequence the Property not altered; so that the Fact is as if he had taken the Goods openly out of the Shop, and run away with them.

Raym. 276.
Sid. 254.

One Farr knowing M. S. had a Sum of Money, and rich Furniture in her House, procured an *Affidavit* to be filed of the Service of a Declaration in Ejectment against her at his Suit, though he had no Title to the House, and got Judgment and a Writ of Possession; and entered and turned her out, and seized the Goods, and converted them to his own Use; for which he was indicted and found guilty of Felony at the *Old Bailey*, and executed, because he used the Process of Law with a felonious Intention.

10 & 11 Will.
3. c. 23, s. 2.

To encourage Men to bring Offenders to Punishment, there is a Law, that apprehending a Felon for stealing to the Value of 5 s. out of a Shop, Coach-house, Stable or Ware-house, either in the Night or Day-time, and the Person being convicted, such *Apprehender* shall have a Certificate under the Hand of the Judge or Justices, before whom such Conviction is had, certifying the same, and also within what Parish the Felony was committed, and the Person so taking or discovering the Felon; and the Judge or Justices shall direct and appoint the Certificate into so many Shares, to be divided among the

Persons

Persons concern'd, if any Difference shall arise amongst them touching their Right to the said Certificate.

This Certificate may be assign'd once and no more, and the original Proprietor, or his Assignee, shall be discharged of all Parish-Duties wherein such Felony shall be committed. Sect. 2.

It must be inrolled by the Clerk of the Peace of that County in which it shall be granted. Sect. 2.

And if the Person happen to be killed in taking a Felon, he that has Right to his Personal Estate shall have the Certificate. And as a further Encouragement to the Discovering a Felon, 'tis enacted, That if any Person shall commit *Burglary, House-breaking, or Felony in stealing Horses*, or any Money, Wares or Goods, and being out of Prison, shall discover two more who have committed such Felony, or cause two more to be discovered, apprehended and convicted, such Discoverer shall have the King's Pardon, which shall be a good Bar to any Appeal to be brought for the same. Sect. 4. Sect. 5.

And to make the Punishment of evil Persons more visible, those who are convicted of Theft or Larceny, for which the Benefit of Clergy is allowed, shall be burnt with the usual Mark in the *Left Cheek*, near the Nose, in the Presence of the Judge.

But this Punishment had not its desired Effect, for it did not deter Offenders from committing such Crimes, but on the Contrary made them desperate, being by such an open and visible Mark made incapable to be trusted in any Service and Employment to get a Livelihood: Therefore by the Statute 5 Ann. this Act was repealed as to this Punishment, and the Offender was to be burnt in the Hand as before. And as a farther Punishment, the Judge or Justices, before whom the Party shall be convicted, may commit him to the House of Correction, or Publick Work-house, there to be kept without Bail not less than six Months, nor above two Years from the Time of such Conviction, and to work all that Time or be whipp'd. 5 Annæ, c. 6. f. 2.

And if such Person escapes, and is retaken, two Justices of Peace (*Quorum unus*) where he was retaken, may remand him to the House of Correction, there to remain without Bail not less than a Twelve-month, and not exceeding four Years, to be accounted from such Re-taking; and if the Keeper of the House of Correction shall neglect to keep him at hard Labour, and correct him; then Proof thereof being made by Oath of one Witness before a Judge of Assize, he may remove him from his Office.

By another Paragraph in the same Statute 10 & 11 W. Sect. 1. it is enacted, That if any Person shall steal out of a Shop, Warehouse, &c. any Goods privately and feloniously of the Value of 5 s. or more, though such Shop, &c. be not broken open, &c. or that shall assist in committing such Offence, &c. he shall not have

the Benefit of Clergy. Now the Case at a Sessions in the *Old Baily*, 9 Geo. was thus:

Mod. C. in L.
& E. 165. S. C.

To wit, a Shirt which was the Property of *W. R.* was left in the Shop of *T. S.* to be sent to a Seamstress to mend, and it was stolen by the Prisoner out of the Shop, for which he was indicted and convicted: And the Question was, whether he should have his Clergy? And adjudged that he might, for this was not a Felony within that Statute, which was made as a Remedy for the Owners of Shops to preserve their own Goods there, by Way of Trade, and therefore did not extend to Goods casually lost there; and consequently stealing such Goods to the Value of 5*s.* was not Felony within that Statute, and without Benefit of Clergy.

And for a due Encouragement to be given to such who shall vigorously endeavour to discover and apprehend Malefactors; an Act was made in the same * Year, That he who after the 10th of *May* 1707 shall apprehend and take one guilty of Burglary, or felonious Breaking and Entering an House in the Day-time, and shall prosecute him to Conviction, shall, over and above the Reward which he is intitled unto by the Statute 10 *Willi.* receive the Sum of 40*l.* within one Month after such Conviction, to be paid by the Sheriff of the County where the Offence was committed, upon tendring a Certificate unto him, signed by the Judge before whom the Offender was convicted, certifying the same, and in what Parish it was done, and that the Felon was taken by the Party claiming the Reward.

Se^{ct.} 1.

And if any Dispute shall arise between the Persons who shall take a Felon, concerning the Right to such Reward, it shall be in the Power of the said Judge to proportion the same by his Certificate amongst them; and if the Sheriff shall fail in paying the said Sum, then he forfeits to the Party grieved double the Sum he ought to have paid, to be recovered by Action of Debt, &c. with treble Costs.

Se^{ct.} 2.

And if any Person shall be kill'd in endeavouring to take such House-breaker, then his Executor or Administrator, upon Certificate from the Judge or Justice of Assize of the County where the Fact was committed, or the two next Justices of the Peace, that the Person was kill'd, shall receive 40*l.* of the Sheriff where the Fact was done, and in Default of Payment, then double that Sum, with treble Costs.

Se^{ct.} 3.

The 40*l.* the Sheriff may deduct in his Accounts, but not the 80*l.* or treble Costs; and if he shall not have enough of the King's Money in his Hands to satisfy the same, then he shall be repaid by the Lord Treasurer out of the Revenue of the Crown, upon Certificate from the Clerk of the Pipe to that Effect.

Se^{ct.} 4.

And if any Person out of Prison shall discover two House-breakers, so as they shall be convicted, he shall have the like Reward

Reward of 40 *l.* and all other Advantages which such Taker or Prosecutor as aforesaid is intitled unto, and shall likewise have a Pardon, which shall be a Bar to an Appeal.

By the same Statute it is enacted, That he who buys stolen Goods, knowing the same to be stolen, or who shall receive or conceal any Burglar, Felon or Thief, knowing them to be so, shall be adjudged Accessary to the Fact, and being convicted, shall suffer Death. But if the principal Felon cannot be taken, then the Buyer or Receiver of the Goods which he stole shall be prosecuted only for a Misdemeanor, and fined and imprisoned, or suffer any other corporal Punishment as the Court shall inflict, tho' the principal Felon is not convicted; and this shall exempt the Accessary from any farther Punishment, if it shall happen that the Principal should afterwards be convicted.

Sect. 5.

Sect. 6.

By another Statute, 'tis made Felony to forge or counterfeit any *Exchequer* Bill, or any Indorsement thereon, or to tender any such Bill in Payment, or demand to have the same exchanged for Ready Money by the Governor and Company of the Bank of *England*, or by any Receiver or Collector, knowing the same to be forged or counterfeited, with an Intent to deceive any Person; and 'tis Felony without Benefit of Clergy.

7 Annæ, c. 7.

No Clerk of Assize or Peace, shall take any Thing of a Witness for giving Evidence against a Felon. Which see under Title *Clerk of the Peace*.

Felonies committed in the Reign of one King, the Prosecution may be in the Reign of another.

Observations thereon,

Felonies committed in one County, and the Offender taken in another may be imprison'd where taken, and removed to be prosecuted where the Fact was done.

But if he carry the Goods with him, 'tis Felony in every County where they are carried.

By the Statute of 23 *H. 8. c. 1.* Clergy is taken away from Principals and Accessaries in Robbery: And because Men robbed in one County and fled into another, and so were indicted only for Felony, and had their Clergy; therefore by the Statute of 25 *H. 8. c. 3.* Clergy was taken away from those who were found guilty in *any County* for stealing Goods, if it appear to the Judge that he ought not to have Clergy, if he had been tried in the County where the Fact was committed. *Anno 31 Eliz.* a Man committed a Robbery in *Wilts.* and fled into *Berks.* where the Goods were taken upon him; and there he was indicted only for Felony, and found guilty to the Value of 10 *d.* And it appearing to the Court that he had robbed the Person in the *Highway*, the Question was, Whether he should be hanged, by the Statute 25 *H. 8.* or only whipp'd for Petty Larceny? And resolved by all the Judges, That he shall only be whipp'd, because the Statute

extends only to such who shall *demand their Clergy*, and says it shall be *denied*, if upon Examination it shall appear there was a *Robbery done*: But he is found guilty of Larceny only, and so need not demand his Clergy. *Moor 550. P. 379.*

Officers may break open an House to take a Felon, or any one suspected thereof.

And if such Officer hath a Warrant to take a Felon, who is killed in resisting, 'tis not Felony in the Officer; but if the Officer is killed, *contra*.

If a Felon escape from an Officer by Force, and he cannot otherwise retake him, he may be killed, for the Officer will be justified by his Authority.

Cutting Corn, and carrying it away at the same Time, no Felony; but if he lay it aside, and afterwards carries it away, Felony.

A Felon brought before a Justice upon Suspicion, tho' it appears he is not guilty, yet he is not to be discharged without a Trial.

4 Geo. I. c. 11.

By the Statute 4 Geo. c. 11. 'tis enacted, that where any Person shall be convicted of Grand or Petit Larceny, or any felonious Stealing, and who by Law may have the Benefit of Clergy, and liable to be burnt in the Hand or whipp'd, the Court instead thereof shall order such Offenders to be sent to some Plantations in *America* for seven Years, and may transfer them over to the Use of any Person, contracting with another whom the Court shall appoint for the Performance of such Transportation for seven Years.

But when the Offender is to be punished with Death without Benefit of Clergy, and shall be pardoned in order to be transported, the same being signed by a Secretary of State, then the Court may order the like Transportation of such Offenders; and likewise of any Person convicted of *receiving or buying stolen Goods, knowing them to be stole*, for fourteen Years; and the Person who transports them, shall have a Property in their Service, for such respective Terms.

Returning before the End of the said Terms, they shall be executed as Felons attainted: But the King may dispense with the Transportation, and allow Offenders to return, paying their Owner such Sum as by two Justices residing where he dwelt shall be judged reasonable; and where such Offenders shall have served out their Time, it shall have the Effect of a Pardon for the Crime.

The Person who shall contract with him, appointed by the Court to transport those Criminals, shall before they are transferred to him, give Security to the Person with whom he contracts, to transport them to some Colony in *America* as the Court shall order, and to procure a Certificate from the Governor or chief Custom-house Officer there, that they were

were landed, and that they shall not be suffered to return, by the wilful Default of the Contractor, or his Assigns.

He who takes *Money*, or any Reward to help another to his *Goods which were stolen*, shall be guilty of Felony himself, and suffer as if he had stolen the Goods, unless he apprehends the Felon who did. See 6 Geo. 1. c. 23. s. 9.

Any idle Person of the Age of fifteen Years, and under twenty-one, may contract with a Merchant, or other, to be transported in his Service for eight Years, provided he come before the Lord Mayor of *London*, or some other Justice of that City, or before two Justices in the County where the Contract is made, and acknowledge his Consent, and sign the Contract in their Presence, and with their Approbation, which shall be certified to the next General Sessions, with the Tenor of the Contract, there to be register'd without Fee.

By the Statute 6 *Geo.* all the Powers and Authorities in the Act before-mentioned given to any Court, before whom any Felons are convicted of any Offences, for which they may be transported, shall be observed and executed by any *subsequent Court* held for any County, where such Felons shall be tried and convicted, though such other *subsequent Court* shall happen to be held at, or in any other Town or Place, than that wherein such Trial or Conviction were or shall be. 6 Geo. 1. c. 23.

Provido, That the Court, before whom such Felons shall be convicted, may nominate and appoint *two Justices of the Peace* of the County, &c. where such Offenders shall be convicted, who shall have Power to *Contract* with any Person for the Performance of the Transportation of such Felons, and to order such Security as the said Act directs to be taken by the Court, and after to cause such Felons to be delivered by the respective Gaolers, pursuant to such Contracts, to the Person contracting for them, or his Assigns; which said Contracts and Security shall be certified by the Justices, who shall make and take the same to the next Court, held with the like Authority for the County, &c. where such Felons were, or shall be convicted, to be filed and kept amongst the Records of the said Court.

All Charges about making Contracts, and taking such Security, and conveying Felons to be transported by Virtue of these Acts, shall be born by the County, &c. where the Court was held, which ordered such Felons to be transported, and the Treasurer of the County-stock shall, by Order of the Sessions, pay all such Charges and Expences to such Persons as shall be employ'd for the Purposes aforesaid.

All Securities for Transportation, hereafter to be taken by Virtue of these Acts, shall be by *Bond* in the Name of the *Clerk of the Peace*, &c. and they and their Successors shall prosecute such *Bonds* in their own Names, for which Purpose

pose every *Clerk of the Peace* shall be a Body Corporate, and shall be paid by the Treasurer of the County-stock, by Order of the *Sessions*, all such Charges, Costs and Expences as they shall be at, or sustain in any such Suit; and all Monies recovered on such *Bonds*, shall be for the Use of the County, and shall be paid to the Treasurer of the County-stock.

The Person so contracting, and to whom any such Felons or Offenders shall be delivered to be transported, or any Persons directed by the Justices who made the Contract, may carry and secure the Felons thro' the Country, and in such Manner as they shall think fit, towards the Sea-Port, from whence they are to be transported; and any Person or Persons *rescuing* them, or any of them, or *aiding or assisting* in their Escape, shall suffer Death, as in Cases of Felony, without Benefit of Clergy.

Felons order'd for Transportation, coming on Shore and returning to *Great Britain* before they have been transported to *America*, or breaking Gaol, or escaping before Transportation, or being afterwards at large, without some lawful Cause, before the Term expired, for which they were ordered to be transported, and being lawfully convicted thereof, shall suffer Death, without Benefit of Clergy.

The Clerk of the Assize, and the Clerk of the Peace, where such Orders for Transportation shall be made, and their Successors, shall at the Request of the Prosecutor, or any other in the King's Behalf, certify a short Transcript containing the Effect of every Indictment and Conviction, &c. and of the Order and Contract for Transportation, to the Court where such Offender shall be indicted, for which *2s.* and *6d.* and no more, shall be paid, which Certificate shall be a sufficient Proof that the Person hath been convicted, and order'd to be transported.

See 4 Geo. 1.
c. 11.

He who shall discover, apprehend and prosecute to Conviction of Felony without Clergy, any Person for *taking Money or other Reward, to help another to his Goods which were stole*, (such Person having not apprehended the Felon who stole them, and brought him to Trial and given Evidence against him,) shall be intitled to a Reward of *40 l.* for every Offender so convicted, and shall have the like Certificate and like Payments made without Fee, as any Person for apprehending, prosecuting and convicting a *Highway-man*.

Any Person after the 24 June 1720, wilfully and maliciously assaulting another in the publick Streets or Highways, with an Intent to tear, spoil, cut, burn or deface the Garments or Clothes of such Person, and shall actually do it, then the Person so offending, and being thereof lawfully convicted, shall be guilty of Felony, and shall be transported for seven Years.

'Tis

'Tis Felony without Benefit of Clergy for any Person *after* 9 Geo. 1. c. 22.
1 June 1723, to appear *armed*, and having *his Face blacked*
or disguised;

In any *Ground inclosed* where *Deer* have been, or shall be kept;

Or in any *Warren* or Place where *Hares* or *Conies* have been kept;

Or in any *High Road, Heath, Common, or Down*, or shall unlawfully and wilfully *hunt, wound, kill or destroy* any *Deer* in *Forest, Chase, Park, or inclosed Ground*;

Or shall unlawfully *rob* any *Warren* or Place where *Conies* or *Hares* are kept;

Or shall unlawfully take away, or steal any *Fish* out of any *River or Pond*, or break down any *Head or Mound* of a *Fish-Pond*, whereby the *Fish* shall be lost;

Or maliciously *kill, maim or wound* any *Cattle*;

Or cut down or destroy *Trees* in any *Avenue, Garden, Orchard, or Plantation*, for *Ornament, or Shelter, or Profit*;

Or set *Fire to any House, Barn, Out-house, Hovel, Mow of Corn, Straw, Hay or Wood*;

Or maliciously *shoot* at any Person in any *Dwelling-house* or other Place;

Or knowingly send any *Letter* with a fictitious Name demanding any valuable Thing;

Or forcible rescuing any Person in Custody for any of the said Offences;

Or who shall by Gift or Promise of any Reward procure any Subject to join with him in any such unlawful Act.

By the same Statute it is Felony without Benefit of Clergy for any Person guilty of any of the said Offences *after* 2 Feb. 1722, not to surrender himself before 24 July 1723, to a Justice of Peace, where the Offence was committed, and voluntarily to make a Confession and Discovery on Oath of his Accomplices; and if he surrenders before 24 July, he shall be pardon'd.

He who is charged with any of the said Offences, before two Justices, by the Oath of one Witness, the Justices shall * certify such Charge under their Hands and Seals to a Secretary of State, who shall lay the same before the King and Council, who may make an Order for the Offender to surrender himself to some Justice within 40 Days, which Order shall be published in the *Gazette*, and sent to the Sheriff, and within six Days after shall be proclaimed by him or his Officer in two Market-Towns, next to the Place where the Offence was committed, and a Copy thereof fix'd in some publick Place there; and if the Offender shall not surrender himself pursuant to such Order, he shall stand attainted of Felony without Benefit of Clergy; and the Judge of Assize upon producing such Order under Seal of the Council may award Execution.

By 10 Geo. 2.
c. 32. cutting
River or Sea
Banks, unlaw-
fully and ma-
liciously cut-
ting HopBinds,
burning Delphs
of Coals.

* See the Form
of the Certifi-
cate.

Concealing, Abetting or Succouring an Offender after the Expiration of the Time he is to surrender himself, knowing him to be charged on Oath, and that he hath been required by such Order to surrender himself, this is Felony without Benefit of Clergy.

Offender taken before the Time expired, in which he is by the said Order to surrender himself, shall be tried by due Course of Common Law.

The Inhabitants of the Hundred are chargeable to make Satisfaction for any Damages sustained by any Person, and done by any Offender against the aforesaid Act 9 Geo. the Sum to be recovered not exceeding 200 *l.* And if the Plaintiff recover in the † Action against any Inhabitant, and take out Execution against him, all the other Inhabitants of that Hundred shall be ratably and proportionably taxed towards an equal Contribution for the Relief of the Defendant; which Tax must be raised by such Ways, and in such Manner as is prescribed for raising Damages recovered against the Hundreds in Cases of Robbery, by the Act 27 *Eliz.* (*viz.*) two Justices, (*Quorum unus*) may tax the Towns, Villages, Parishes and Hamlets in the Hundred, to make an equal Contribution, &c. This Act is continued by 10 Geo. 2. c. 32.

† The Action must be brought within a Year after the Offence.

By 7 Geo. 2. c. 21. If any Person shall with any offensive Weapon or Instrument, unlawfully and maliciously Assault, or shall by Menaces, or in or by any forcible or violent Manner demand Money, Goods or Chattels of or from any other Person, with a felonious Intent to rob or commit Robbery, every Person so offending, on lawful Conviction, shall be adjudged guilty of Felony, and shall be transported for seven Years; and in Case of breaking Gaol, or escaping before Transportation or after, before the End of the seven Years, he shall suffer Death as a Felon.

By 8 Geo. 2. c. 20. 'Tis Felony without Benefit of Clergy, for any Person by Day or Night wilfully and maliciously to pull down, cut down, pluck up, throw down, level, or otherwise destroy, any Turnpike Gate, Posts, Rails or Walls, or any Chain, Bar or Fences belonging to any Turnpike, &c. erected or to be erected to prevent Passengers passing without paying Toll directed to be paid by any Act of Parliament made or to be made, or any Houses erected for the Use of any Turnpike Gate, Fences, Lock, Sluice, Flood-gate, or other Works on any navigable River erected, or to be erected; or forcibly to rescue any Person being lawfully in Custody of an Officer, or other Person, for any of the aforesaid Offences.

A Warrant to search for a Felon, and to raise Hue and Cry, &c.

To the Constables and other Officers in the County of
S. &c.

Suffex, to **W** Hereas T. P. of, &c. hath this present Day
writ, complained unto me R. B. Esq; one of his
Majesty's Justices of the Peace for the County aforesaid, That
upon Friday the second Day of January last at Night, he was
robb'd of, &c. and other Things, and that he hath great Cause
to suspect J. O. an idle Person: [here describe his Person,
Clothes, and Age] These are therefore to require you, and
each of you to search diligently within your several Precincts
for the said J. O. and likewise to make Hue and Cry after him
from Town to Town, and from one County to another, as well
by Horsemen and Footmen; and if you shall find the said J. O.
that then you apprehend him, and carry him before some Justice
of the Peace where he shall be taken. And hereof fail not.
Given, &c.

A Warrant to apprehend a Felon.

To the Constable, &c.

Suffex, to **W** Hereas T. P. of, &c. hath this present Day
writ, made Oath before me R. B. Esq; one of his
Majesty's Justices of the Peace of the said County, and thereby
charged J. O. of, &c. with the felonious Taking, &c. These
are therefore to command you to apprehend the said J. O. and
to bring him before me, or some other of his Majesty's Justices
of the Peace for the said County, to be examined concerning the
Premises with which he is charged. And hereof fail not.
Given, &c.

Another Warrant to search for suspected Persons, &c. and to apprehend, &c.

To the Constables, Tithingmen, &c. in the County of Suffex,
and to all the other Constables within the said County.

Suffex, to **W** Hereas Complaint hath been made unto me by
writ, T. P. of, &c. That certain Sheep, &c. and
other Goods, were lately feloniously taken from him, and that he
hath just Reason to suspect several idle and disorderly Persons
within

Felony.

within your Parish to have unlawfully taken the same: These are therefore to command you, that immediately upon Receipt hereof, you diligently search every suspected House and Place within your Parish, which you and the said T. P. shall think convenient to search; and if you shall find any of the said Goods in the Possession of any such suspected Person or Persons, or shall have any just Cause to suspect any Person, that then you bring such Person or Persons before me, or some other Justice of the Peace for the County aforesaid, to answer the Premises, and to be examined concerning the same. And hereof fail not. Given, &c.

If he confesseth the Felony, then you may take his Examination subscribed by him thus: *Viz.*

The Examination of a Felon.

THE Examination of *T. P. &c.* taken before me *R. B. Esq;* a Justice of the Peace for the said County, the second Day of *January 1703.*

The said *T. P.* being charged before me by *R. R. of, &c.* That the said *T. P.* did lately feloniously steal out of the House of the said *R. R.* in the Parish, *&c.* Woollen, *&c.* and other Goods of the said *R. R.* to the Value of, *&c.* He the said *T. P.* did upon Examination by me, the said second Day of *January*, confess that he stole the Goods, and sold them to *J. O. of, &c.* for 10 *l.* And further saith not.

R. B.

T. P.

The Mittimus.

To the Keeper of the common Gaol at *H.* in and for the County of *Suffex*, or to his Deputy there

Suffex, to **T***Hese are to charge and command you to receive*
wit, *into your Gaol the Body of T. P. late of, &c.*
taken by W. N. and W. V. Constables of, &c. and brought by
them before me for Suspicion † of Felony, and that you safely
keep him in your said Gaol and Custody until he shall be from
thence discharged by due Course of Law. Given under, &c.

† Or having
 confessed it, as
 the Case is, or
 being charged.

A War-

A Warrant to cause Witnesses to appear
and give Evidence.

To the Constable, &c.

Suffex, to **Y**OU are hereby required forthwith to warn
wit, R. D. of, &c. and T. W. of, &c. to be at
my House in H. &c. upon Friday the second Day of, &c. by
Ten of the Clock, &c. to testify their Knowledge concerning
a Felony suspected to be done by T. P. of, &c. And hereof
fail not. And that you be there likewise with this Precept,
to shew how you have executed the same. Given under my
Hand, &c.

A Warrant for a Witness to appear and
give Evidence at Sessions.

To the Constable, &c.

Suffex, to **W**Hereas I am informed, that J. H. of, &c.
wit, is a material Witness to be examined on his
Majesty's Behalf, concerning a felonious Act suspected lately to
be done by T. P., &c. These are therefore to command you to
warn the said J. H. personally to appear at the next General
Quarter-Sessions of the Peace, to be held for the said County at
L. then and there to give Evidence upon such Matters as he
shall be examined upon. Given under my Hand, &c.

Information against one appearing armed
and with his Face black'd.

The Information of T. R. of, &c. taken on Oath before us
R. R. and W. W. two of his Majesty's Justices of the
Peace for the County of W. where the Offence herein
mentioned was committed.

THIS Informant saith, That on Wednesday the 18th
of Feb. 1724, T. W. of, &c. was arm'd with a
Sword and Fire-Arms, having at that Time his Face black'd
and disguised, and did voluntarily and wilfully on the Day and
Year aforesaid so arm'd and disguised unlawfully * hunt, wound * Or as the
and kill one Deer in the Park of B. B. of, &c. in, &c. inclosed, Case is.
and where Deer are usually kept, contrary to the Statute in that
Case made and provided.

T. R.

This

This Information must be certified by the two Justices, and return'd to a Secretary of State.

The Form of the Certificate.

To the Right Honourable R. Lord T. one of his Majesty's Principal Secretaries of State.

WE R. R. and W. W. two of his Majesty's Justices of the Peace in and for the County of W. do hereby certify, That T. R. of, &c. did on, &c. make Oath before us, That T. W. of, &c. was, on Wednesday the 18th Day of February, armed with a Sword and Fire-Arms, having at that Time his Face black'd and disguised; and that he did so armed and disguised unlawfully hunt, wound and kill one Deer in the Park of B. B. of, &c. which Park is inclosed, and Deer are usually kept there; and that the Information of the said T. R. so taken before us on Oath is hereby returned. Witness our Hands and Seals in the Day and Year above-written.

R. R. W. W.

Condition of a Recognizance to appear and give Evidence against a Felon.

THE Condition of this Recognizance is such, That if the said J. H. shall personally appear at the next General Sessions * of the Peace to be held at L. for the East Part of the said County of Suffex, and then and there give such Evidence as he knows against, &c. of and concerning the felonious Stealing two Silver Spoons, the Goods of R. B. and do not depart thence without Leave of that Court, that then, &c.

*O at the next Affizes, &c.

If there be no direct Charge against the Person, but only Suspicion, then you bind the Person in a Recognizance, with a Condition to appear at the Affizes or Sessions, as followeth:

The Condition for a suspected Person to appear, &c.

THE Condition of this Recognizance is such, That if the above-bounden T. P. shall personally appear, &c. and do then and there answer all such Matters and Things which shall be objected against him, being suspected to have feloniously taken the Goods of, &c. and not depart without Leave of the Court, that then this Recognizance to be void, &c.

Indict.

Indictment for a Felony.

Middlesex, to **T**HE Jurors, &c. That J. O. late of H. wit, in the County of Middlesex, Labourer, on the twenty-seventh Day of June in the fifth Year of the Reign, &c. at H. aforesaid in the said County, with Force and Arms, &c. did break and enter the Close of one T. P. and did feloniously steal, take, and drive away a certain White Horse of the Price of five Pounds, of the Goods and Chattels of the said T. P. then and there, that is to say at H. aforesaid in the said County, found, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

For seizing the Goods of a Felon before Conviction. See Forfeiture.

Sussex, to **T**HE Jurors, &c. That whereas one J. O. wit, late of H. in the said County, Labourer, was taken and arrested upon Suspicion of having committed a certain Felony, to wit, for that, that he the said J. O. did feloniously take and drive away a certain Horse of the Goods and Chattels of one T. P. and that the said J. O. was then and there carried before H. P. Esq; one of the Justices of our Sovereign Lord the King assigned to keep the Peace in the said County, and by Warrant from the said Justice was duly committed to the Gaol of the said County; whereupon certain Persons, that is to say, J. S. of, &c. and T. R. of, &c. did then and there drive away five Cows, two Horses, &c. of the Goods and Chattels of the said J. O. that was so arrested for the said Felony, before he was convicted thereof, contrary to the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

By the Statute of the 1st of R. 3. c. 3. If Goods of a suspected Person be seized before Conviction, he forfeits to the Party grieved double the Value, to be recovered by Action of Debt. 1 Rep. 171. See 1 Lutw. 132. a Declaration on this Statute. Raym. 414.

This Statute is but an Affirmance of the Common Law; for there is a Writ to deliver the Goods upon Security given; and 'tis grounded upon this Reason, That the Felon may have something to support himself in Prison; but this Statute doth not extend to a Person at Large; for in such Case the Officer may seize them by the Statute of 25 Ed. 3. c. 14. Raym. 414.

So

Felony.

So that at Common Law such Goods are not forfeited till Conviction, and till then the Party ought to have the Benefit of them to maintain himself: 'Tis true, they may be put *in salva custodia* (in safe Custody), but cannot be seized for the Use of the King till the Party is convicted.

If the Felon doth not fly, but is apprehended with the Goods, the Owner shall have them; if he flies, and fresh Pursuit is made, and he waives the Goods, and they are taken up and carried away before the Owner comes, the Property is altered by the Seizure, and vested in the Lord; but if the Pursuit was always in View of the Felon, 'tis otherwise. *Het. 65.*

Of Pleas in Felony.

These are of three Sorts, *viz.* { 1. Demurrer.
2. In Abatement or Bar.
3. The General Issue.

1. If the Defendant demur, he ought to be very certain that the Indictment is faulty; for if it be adjudg'd good, he shall have Judgment and Execution, because by the Demurrer the Fact is confessed as laid in the Indictment.

2. In Abatement, { 1. *Misnomer* in the Surname.
2. *Misnomer* in the Christian-name.

If in the Surname, 'tis a good Plea in Abatement unto an Appeal, but not to an Indictment; but in the Christian-name, 'tis a good Plea to an Indictment; and if 'tis found, or confessed by the Attorney General, 'tis naught; but then the Party must confess his true Name, that he may instantly be indicted.

In Bar, { 1. *Auterfoitz* (heretofore) acquit.
2. *Auterfoitz* convict.

Auterfoitz
acquit.

- { 1. This must always be intended of a lawful Acquittal; for if the Indictment or Appeal is insufficient and faulty, and the Defendant is acquitted thereon, he may be indicted again for the same Felony, unless Judgment is given upon such Indictment; for that must stand till reversed by Error.
2. This must be always of the same Felony; and therefore 'tis no good Plea to an Indictment or Appeal for another Felony.
3. An Acquittal upon an Indictment of Death, is no Plea to an Appeal brought for

for the same Death; but an Acquittal upon an Indictment or an Appeal, in Cases of Felony is a good Plea to any other Indictment for the same Felony, though 'tis not so in the Case of Death.

But then the Appeal must not be erroneous in Substance, nor be brought by a wrong Person.

Auterfoitz
convict.

Of Manslaughter, either upon an Indictment or an Appeal, is a good Plea to any other Indictment for the same Crime.

Feme Covert.

THE Peace may be granted against her, or against an Infant though under fourteen Years of Age; but then she must not be bound, tho' with her Husband; for the Recognizance will be void as to her; but she must find Sureties; which, if she cannot do, she must be committed.

If she commit a Riot or Trespass without her Husband, she may be indicted and fined, but the Fine shall not be levied on her Husband, but on her after his Death, and she shall be committed till 'tis paid. 9 Rep. 72. Dr. Hufsey's Case. 11 Rep. 61. B. Dr. Foster's Case. For the Husband can't be liable to Penalty incurred by the Wife, unless he is made Party to the Suit, and Judgment is given against him.

If she steal Goods by the Compulsion of her Husband, 'tis not Felony in her, because of the Necessity of Obedience; but if it was at his Persuasion without any Constraint, she is then guilty of Felony, and her Husband is Accessary.

But this Privilege doth not prevail in Cases of Treason and Murder, because of the Greatness of those Offences.

It hath been held, That if both steal together, this shall be taken to be the Act of the Husband alone, and that she cannot be so much as Accessary to it, because of the Necessity of Obedience as aforesaid; but I think Obedience should only extenuate the Crime, for such it is, and she ought not to consent to it; if she doth, she may be indicted.

She cannot steal her Husband's Goods; but if she is taken away with them against his Consent, 'tis Felony in him that takes her; so 'tis if she delivers her Husband's Goods to an Adulterer; this is Felony in him.

In an Indictment for selling Ale without Licence, the Husband must be join'd, because he is to pay the Fine.

She

Fine. Fire.

She may be committed for a Force or Riot, as aforesaid, but an Infant cannot; yet if she be asked to find Sureties of the Peace, and cannot, she may be committed.

Feasant. See Partridge.

Fences. See Trees.

Forests. See Dogs.

Fine.

WHere a Fine is set by any Statute, in such Case, if the Offender confess the Indictment, or is found guilty, the Court cannot mitigate the Fine; but if he submit with a Protestation of his Innocency, and *quia noluit placitare cum Dom. Reg.* (because he was unwilling to plead with the Lord the King) but would rather put himself upon the Favour of the Court, they may then set a less Fine than injoin'd by the Statute, &c. 2. For if the Legislature expressly settles the Measure of Punishment, it seems repugnant that any Court of Judicature, without an express Power given them, should take upon them to alter it.

A Fine is under the Power of the Court during the Term in which it is set, and may be mitigated as shall be thought proper, but after the Term it admits of no Alteration. 2 *Hawk.* 446. And it seems the same may be done during the Continuance of a Sessions, but not after.

Fire.

TO prevent Losses and Mischiefs which may happen by Fire within the Cities of *London* and *Westminster*, and within the Compass of the Weekly Bills of Mortality, a * Law was made, That the Church-wardens of every Parish in the said Places, shall at the Charge of their respective Parishes, fix upon the Pipes belonging to the Water-works so many wooden Stop blocks, to lie even with the Pavement of the Street, with a Two Inch Plug; the said Stop-blocks to be repaired by the Parish, and the Plugs by the Owners of the Pipes; or so many Fire-cocks to go into each main Pipe; and to be placed in any Street where the said Church-wardens shall direct; and to make a Mark on the Front of any House over against the Places where such Stop-blocks are, and to keep

* 6 Annæ, c.
31. s. 1.

keep an Instrument in the said House to open the Plug when any Fire happens.

And that each Parish shall keep a large † Engine, and an Hand-Engine, and a Leather-Pipe and Socket of the same Size as the Plug or Fire-cock, that the Socket may be put into the Pipe to convey the Water clear to the Engine; or in Default thereof, being convicted before two Justices of Peace, shall forfeit 10*l.* one Moiety to the Informer, and the other to the Overseers of the Poor where such Default shall be made, for the Use of the said Poor.

This Forfeiture is to be levied by a Warrant of two Justices, &c. by Distress and Sale of the Goods of the Church-warden.

And it is further provided, That the Turn-cock belonging to the Water-work, whose Water shall first come into the Main Pipe where the Plug shall be opened at any Fire, shall be paid 10*s.* and the first Person who brings in a * Parish Engine, if in good Order, with a Socket, Hose, and a Leather Pipe, shall be paid 30*s.* the Person who brings in the second Parish Engine, shall be paid 20*s.* and the third 10*s.* by the ‡ Church-wardens where such Fire shall happen.

by the Alderman of the Ward, or his Deputy, or two Common-Council-Men of the Ward where the Parish is, in which the Fire happen'd.

† Per 7 Annæ, c. 17. § 5. The Church-wardens may assess Money for the Maintenance of the Engine, Stop-blocks, &c. as they do for the Maintenance of the Poor, &c.

* Per 7 Annæ, or any other great Engine. ‡ Per 7 Annæ, but not without the Appro-

All these Sums, in Default of Payment, shall be recover'd by Warrant of two Justices, &c. by Distress and Sale of the Goods of the Church-wardens.

And because Fires often happen by the Negligence and Carelessness of Servants, both in Houses and Out-houses; therefore if such Servant shall be lawfully convicted thereof before two Justices of the Peace, by the Oath of one Witness, he shall forfeit 100*l.* to the Church-wardens of such Parish, to be distributed amongst the Sufferers, as to the Church-wardens shall seem just; and in Default or Refusal to pay the same, immediately upon Conviction, being lawfully demanded by the Church-wardens, shall be committed by two Justices to the House of Correction for 18 Months, there to be kept to hard Labour.

All Houses built since May 1708. shall have Party-Walls between House and House, built wholly with Brick or Stone; in the Cellar two Bricks thick; from the Foundation upwards, 13 Inches; above the Roof, 18 Inches; and no Mundilions or Timber under the Eaves: Front and Rear-Walls to be carried two Foot and Half high above the Garret-Floor, with Brick or Stone; and if otherwise, then the Owner of the House and Head-Builder, shall each of them forfeit 50*l.* one Moiety to the Informer, and the other to the Poor of the Parish where the House was built, and to be paid to the Church-wardens for that Purpose.

This is to be levied by a Warrant from two Justices, by Distress and Sale of the Offender's Goods.

The Conviction is to be upon Oath, or upon View of one or more Justices; and for Want of Distress, the Party shall by the like Warrant be committed till Payment.

And for the Space of three Years next ensuing, and from thence to the End of the next Sessions of Parliament, no Action shall be brought against any Person in whose House any Fire began. Made perpetual 10 *Ann. c. 14.*

7 A. c. 17. f. 2

The Rewards to the Turn-cock and others shall not be paid without the Approbation and Direction of the Alderman of the Ward where the Fire happen'd, or of his Deputy, or two Common Council-Men of the same Ward; the several Rewards shall be likewise paid to the Keeper of any *other great Engine*, who shall bring it in, to help to extinguish the Fire, in good Order and compleat, though it is not a *Parish Engine*.

If the Vestries shall think it necessary to have more than one great Engine or Hand-Engine, they may provide it at the Parish Charge, by an Assessment to be made as by the former Act, and to be under the same Regulations.

The Vestries may rate and assess such Sums of Money as are necessary to defray the Charge of providing and maintaining the Engines, Stop-blocks, and Fire-cocks, and other Implements and Materials, and for Payment of the said Rewards; which Rates being confirmed as the Poor-Rates may be levied in like Manner. See the Act at large.

10 A. c. 14.

The Clause in the Act 6 *Annæ*, that an Action shall be had against any Person in whose House or Chamber any Fire shall happen, or any Recompence be made by such Person for any Damage suffer'd; and that if such Action shall be brought, the Defendant might plead the General Issue, and give this Act in Evidence; and if he recover, shall have treble Costs, is now by this Act made perpetual.

See the 11 *Geo. 1. c. 28.* to prevent Mischiefs that may happen by Fire, page 151. Title *Buildings*.

A Warrant against Church-wardens for not fixing Stop-blocks.

To the Constable of, &c.

London, to **W** Hereas T. S. and J. B. Church-wardens of the Parish of St. Martin's Ludgate, in the City of London, have been duly convicted before us J. M. and N. P. two of his Majesty's Justices of the Peace in and for the said City, that the said Church-wardens have, since the Day of May, which was in the Year of our Lord 1708, made Default in placing, fixing and continuing Stop blocks of Wood,

Wood, with a Two-Inch Plug on the Main-pipe, belonging to the Water-work in the said Parish, contrary to the Law in that Case made and provided, by Reason whereof they have forfeited 10 l. These are therefore to require you, to levy the said Sum of 10 l. by Distress and Sale of the Goods of the said Church-wardens, rendring to them the Overplus, if any such shall happen to be; and that you pay one Moiety thereof to R. W. of, &c. who first informed us of the said Offence, and the other Moiety to the Overseers of the Poor of the said Parish of St. Martin, where the said Default was made as aforesaid, for the Use of the Poor of the said Parish. And hereof fail not. Given, &c.

The like Warrant, *mutatis mutandis*, against Church-wardens for making Default in having and keeping in good Order and Repair, one large Engine, and an Hand-Engine, Leather Pipe and Socket.

A Warrant for an Engine-Keeper to recover 30 s.

To the Constable, &c.

London, to **W** Hereas due Proof hath been made on the Day
wit, of the Date hereof, before us J. O. and
H. H. two of his Majesty's Justices of the Peace, in and for
the said City of London, That C. R. Engine-keeper, did first
bring in a Parish-Engine, to help to extinguish a Fire which
lately happen'd in the said Parish; which Engine was then in
good Order, and compleat, with a Socket, Hose and Leather
Pipe; by Reason whereof, the Church-wardens of the said Pa-
rish ought to have paid unto the said C. R. the Sum of 30 s.
pursuant to the Statute in that Case made and provided, but
have hitherto made Default in Payment thereof: These are
therefore to require you to levy the said Sum of 30 s. by Distress
and Sale of the Goods of the said Church-wardens, and that
you pay the said Sum to the said C. R. And hereof fail not,
&c.

A Mittimus of a Servant for negligently keeping the Fire.

To the Constable, &c. and to the Keeper of the House of
Correction.

Suffex, to **W** Hereas T. L. Servant of W. N. of, &c.
wit, was on the Day of the Date hereof lawfully
convicted before us R. B. and G. G. Esquires, two of his Ma-
jesty's Justices of the Peace for the said County, by the Oath of
B b 2 W. Y.

*Viz. Amongst the sufferers, and in such Portions as the Church wardens shall direct.

W. Y. of, &c. That he the said T. L. did on the Day of, &c. last past, through Negligence, fire or cause to be fired, the Dwelling-house of the said W. N. in the Parish of H. aforesaid, by Reason whereof he hath forfeited the Sum of 100 l. pursuant to the Statute in that Case made and provided: And whereas the Church-wardens of the Parish of H. where such Fire did happen, did immediately after the said Conviction demand of the said T. L. the aforesaid Sum of 100 l. the same being forfeited and to be paid to them, to be * distributed as by Law is directed; but the said T. L. hath refused to pay the same: These are therefore to require you to convey the said T. L. to the House of Correction at L. and to deliver him to the Keeper thereof, together with this Warrant: Who is hereby commanded to receive the said T. L. into his Custody, and to keep him in the said House of Correction to hard Labour for the Space of eighteen Months next ensuing: And for your so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

A Warrant against an Owner of an House and Head-Builder, for building contrary to the Act.

To the Constable, &c.

London, to **W** Hereas G. C. Owner of a new House in Fleet-street, was on the Day of the Date hereof convicted before us, &c. by the Oath of W. D. of, &c. for that he the said G. C. did, after the first Day of May, which was in the Year 1708, together with T. D. of, &c. Mason, who did undertake to build the said House, accordingly build the same without Party-Walls between House and House, made either of Brick or Stone, &c. and did make or suffered to be made, Mundillions or Cornices of Timber or Wood under the Eaves of the said House, and did not build, or cause to be built, the Front and Rear Walls of the said House either with Brick or Stone, or carry the same above two Feet and an Half high above the Garret-Floor of the said House, nor cope it with Stone or Brick, contrary to the Law in that Case made and provided, by Reason whereof each of the said Persons have forfeited the Sum of fifty Pounds: These are therefore to require you forthwith to levy the respective Sums of fifty Pounds by Distress and Sale of the respective Goods of each of the said Persons; and that you pay one Moiety thereof to W. D. of, &c. who first informed us of the said Offence; and the other Moiety to the Church-wardens of the Parish of St. Dunstan's in the West, where the said Houses were erected, for the Use of the Poor thereof: And hereof fail not. Given under our Hands and Seals, &c.

A Mit-

A *Mittimus* for Want of a Distress.

To the Keeper of the Gaol of Newgate, &c.

London, to **W** Hereas T. D. Mason and Head-Builder of
wit, a House newly erected in the Parish of
 St. Dunstan in the West in London, was lawfully convicted
 before us R. B. and G. G. &c. for that he, on the sixth of
 August last past did erect and build the said House in the Pa-
 rish aforesaid, and did make, or suffer to be made, Mundillions
 or Cornices of Timber or Wood under the Eaves thereof, contra-
 ry to the Statute in that Case made and provided, by Reason
 whereof he hath forfeited fifty Pounds: And whereas the said
 Sum cannot be levied by Distress and Sale of the Goods of the
 aforesaid T. D. who for Want of such Distress, is to be im-
 prisoned: These are therefore to require you to convey the said
 T. D. to the common Gaol of Newgate, and to deliver him to
 the Keeper thereof: Who is hereby required safely to keep him
 in his Custody until Payment shall be made of the said 50 l. as
 the Law directs, &c.

The Form of a Testimonial, &c. of a Loss by Fire.

Suffex, to **T**O all to whom these Presents shall come, T. P.
wit, R. B. and G. G. Three Justices of the Peace
 for the County aforesaid, send greeting: We have, at the Pe-
 tition of our Neighbours, T. P. R. D. R. R. and J. O. who
 are the Bearers hereof, declared, and do hereby declare, That
 on the second Day of January, &c. between the Hours of, &c.
 a sudden and lamentable Fire happened in the House, &c. which
 in a few Hours burnt down the several Dwelling-houses of the
 Persons above-named in the Parish of, &c. and other Out-
 houses thereunto belonging, and great Part of their Household-
 Goods, and other Goods, and Corn and Hay, to their great
 Loss and Impoverishment: And forasmuch as the said Petition-
 ers in the Behalf of themselves, and their Neighbours, are
 now compelled by Reason of the said Losses, to implore the Relief
 of charitable People; and we knowing their Case, as above
 represented, to be very miserable, have therefore, as much as
 in us lieth, given Leave unto them, and every one of them,
 to go from Place to Place within the said County, to ask, re-
 ceive and take the Charity and Benevolence of all well-disposed
 People, as well to relieve them in their present Necessities, as
 towards the Recovery of their said Losses: And we desire all
 Ecclesiastical Persons, to whom these miserable People shall come

Fire. Fish and Fishing.

and address themselves in this Behalf, to exhort the Parishioners in their respective Parishes, to extend their Charity to these distressed Persons; and that those whom it concerneth, would be aiding and assisting to them in the Collection thereof. In Witness, &c.

Fish and Fishing.

Taken unlawfully, without the Consent of the Owner of the Water, the Offender must pay Damages, not exceeding treble; and to the Poor not exceeding 10s. This to be left to the Discretion of the Justice; and if not able, or no Distress, must be committed, not exceeding one Month, unless give Security to the Party injured, not exceeding 10l. never to offend in the like Nature. 22 & 23 Car. 2. c. 25. §. 7.

Conviction is to be by Confession, or Oath of one Witness before a Justice. *Ibid.*

Appeal given to Quarter-Sessions, which is to be final, if the Title to the Land, Royalty or Fishery, is not concern'd in it.

Taken unlawfully in *Severn*, the Offender forfeits 5 l. Fish and Instruments; if he destroy the Spawn, forfeits 40s. and Instruments, between Poor and Prosecutor.

30 Car. 2. c. 9.

Conviction is to be by Information or Indictment at the Sessions. 30 Car. 2. c. 9.

Justices in *Gloucester*, *Salop* and *Worcestershire*, are Conservators of that River; and one or more of them may grant Warrants to search suspected Houses, &c. *Ibid.*

1 Eliz. c. 17.

Barbel, } Must not be taken under 12 Inches long; Forfeiture is 20s. the Fish taken, and the Engine with which 'tis taken. 1 Eliz. c. 17. *Vide the Statute at Large.*

By this Statute, all Persons who have a Jurisdiction of Conservancy upon Streams of Water, have Power to hear and determine Offences upon the Oaths of twelve Men; and the Justices of Peace, being generally Conservators of Rivers, may therefore inquire concerning it.

But by the express Words of the Statute, the Justices in Sessions have Power, &c. upon Default of Presentments in Leets within a Year; the Stewards of Leets being injoin'd to give the Statute in Charge, or forfeit 40s. between King and Prosecutor.

And if the Jury forbear to present the Offences in this Statute, then the Steward may impanel another to inquire of their Default; which being found, the Jury shall each forfeit 20s. a-piece.

By

By this Statute, *Billinggate* is made a free and open Market every Day in the Week for all Fish; and those who buy Fish there, may sell them again by Retail. 10 & 11 Will. c. 24.

And likewise the Statute of 5 *Eliz.* is enforced, by which no Man was to set a Price, restrain or demand any Tax or Toll for Sea-fish caught by the King's Subjects, and brought into any Place in the Kingdom, under the Penalty of the Forfeiture of the Fish so tolled: But by this Act, the Punishment for taking or demanding any Toll, or other Imposition for *Sea-Fish* of *English* Catching, is 10 *l.* one Moiety to the King, the other to him who will sue for the same.

And because the Fishmongers had got an ill Practice, by imploying some of the Trade to buy up all the Fish brought to *Billinggate*, and then to divide the same amongst three Brethren by Lots; and by this Means sold the Fish at what Rate they would; therefore this Practice was prohibited, and the Imployer imployed to buy any Quantity of Fish to be sold by Lots, and the Fishmonger who should buy in *Billinggate* any Quantity but what should be for his own Sale and Use, forfeit for each Offence 20 *l.* one Moiety to the Poor of the Parish where the Offence shall be committed, and the other to the Prosecutor.

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| | { | Shall not be sold at Sea before Fishermen come to Land. 31 <i>Ed.</i> 3. c. 2. |
| | { | Of <i>English</i> Catching, must be packed in lawful Vessels, and equally packed at both Ends by a sworn Packer, who must make the Vessels, &c. 15 <i>Car.</i> 2. c. 16. |
| Herrings. | { | Price of a Last of Herrings in <i>Great Yarmouth</i> must be 40 <i>s.</i> a Last, and must consist of 10,000 Herrings. 31 <i>Ed.</i> 3. c. 2. |
| | { | Must not be brought into <i>Yarmouth</i> Haven between <i>Michaelmas</i> and <i>Martinmas</i> ; Punishment is Imprisonment during the King's Pleasure, and Forfeiture of Herrings. <i>Ibid.</i> |
| | { | Two Lasts of shotten Herrings equal to one of full Herrings. 31 <i>Ed.</i> 3. c. 2. |
| Lobsters. | { | Must not be sold under eight Inches from the Peak of the Nose to the End of the middle Fin of the Tail, Forfeiture is 1 <i>s.</i> for each Lobster; a Moiety to the Poor of the Parish where the Offence is committed, the other Moiety to the Prosecutor. Conviction is to be before the Chief Magistrate of any Town corporate, or next Justice where the Offence is committed. 10 & 11 <i>W.</i> 3. c. 24. §. 7. |

Fish and Fishing.

Used to destroy Fish, may be burnt by one Justice. Second Offence, Commitment for a Quarter of a Year.

Third Offence, Commitment for a whole Year; and as the Offence, so the Punishment is to increase. 17 R. 2. c. 9.

Drag-Nets must not be used within five Miles of the Mouth of any Haven, unless three Inches in Mesh, except in *Norfolk*, for taking of Herrings, Pilchards, &c. 3 Jac. 1. c. 12. §. 2.

Nets. (See
Dogs.)

Canvas-Nets, or other Devices, shall not be used to destroy the Spawn; the Offender forfeits his Nets, and 10 s. to the Poor, to be levied by Warrant from one Justice, &c. 3 Jac. c. 12. 1 Eliz. c. 17.

Fishing on the Shore of *Cornwall* or *Devon* with a Drift-net, Trammel, or Stream-net, or other Nets of any Sort, from the first of *June* to the last of *October*, forfeits the Nets or the Value of them, and must be committed for a Month. 13 & 14 Car. 2. c. 28. §. 2.

If any besides Owners, Partners or Adventurers in the Craft of Fishing, pack Pilchards in Casks to be sold or transported, except bought of those Owners, or with their Leave, forfeits the Value to the King and Informer. 13 & 14 Car. 2. c. 28. §. 3.

Pilchards.

Purloiners of Pilchards must pay the treble Value, or be sent to the House of Correction; and suspicious Persons flocking about Boats, Nets or Cellars where Pilchards are, being warned to be gone, and refusing, must, upon Complaint to one Justice, pay 5 s. to the Poor, or be put into the Stocks five Hours. 13 & 14 Car. 2. c. 28. §. 4.

Pike,

Must not be taken under ten Inches; Forfeiture *ut antea* in Barbles. 1 Eliz. c. 17.

Must not be taken, from the 8th of *September* to the 11th of *November*; nor young ones, from the midst of *April* to the 24th of *June*.

Salmon,

First Offence, Nets burned.

Second Offence, Commitment for a Year; and as the Offence, so the Punishment is to increase. 13 Ed. 1. c. 7.

Must

- | | | |
|---------|---|--|
| Salmon. | { | Must not be under 16 Inches long when caught, nor taken out of Season: Forfeiture <i>ut prius</i> in Barbels, <i>quod vide</i> . |
| Trout. | | Must not be taken out of Season, or shorter than eight Inches: Forfeiture as in Barbels, <i>quod vide antea</i> . |

By a Statute made 4 & 5 *Annæ*, this Statute of 13 *Ed. 1.* shall extend and be in Force, as well to the Rivers, Creeks and Waters in *Hampshire* and the South Parts of *Wiltshire*, as to the Waters of *Humber*, *Ouse*, *Trent*, and other Waters in the old Act mentioned, and under the same Penalties as there-in mentioned.

Two Justices of Peace, residing within six Miles of the respective Rivers in *Hampshire* and *Wiltshire*, may under their Hands and Seals appoint Overseers of this Statute, who being sworn before the said Justices, may take Offenders, &c. and destroy their Nets and Engines where they shall be found, and which are kept or used contrary to any Act relating to Fishing.

4 & 5 *Annæ*,
c. 21.

The Overseers may bring the Offenders before a Justice of Peace, who for the first Offence shall forfeit not under 20 *s.* nor above 5 *l.* for the second Offence not under 40 *s.* nor above 10 *l.* And as the Offence shall increase, so the Penalty is to be doubled by the Justice before whom the Conviction shall be made.

The Conviction is to be upon Oath of one or more Witnesses, or Confession of the Offender; and a Moiety of the Forfeiture is to be to the Informer, and the other Moiety to the Poor of the Parish where the Offence shall be committed; and if the Party is not able, or shall not pay it on Demand, then the Justice, before whom the Conviction shall be made, may send him to the House of Correction, there to be kept for three Months.

No Person must take *Salmon* at any Time after the 30th of *June* till after the 11th of *November*, or offer any to Sale, under the like Forfeitures and Imprisonment.

And if it shall happen that any *Salmon* shall go into the Ditches, Cuts or Water-Carriages of Meadow-Grounds within the Time limited and restrained by the Act, that then the Owners or Tenants of such Grounds shall permit them to pass into the main Rivers, and not by any wilful Means destroy them under the like Penalties.

Owners and Tenants of Mills in the said Counties, upon any of the Waters or Rivers there, shall keep open a small Hatch of a Foot square in the direct Stream, where there is no Wheel sufficient for the *Salmon* to pass and repass, from the 11th Day of *November* to the 31st Day of *May*, and shall not use

use any Nets or other Devices in that Hatch, during the said Term, to kill or take the *Salmon*, under the like Penalties.

If they lay Pots to catch *Eels* after the first of *January* to the tenth of *March*, they must set Racks before them to keep out the old *Salmon*; and after the said tenth of *March* to the 30th of *May*, they shall lay no Pot but what shall be wide enough to let the Fry of *Salmon* pass thro' to the Sea; and shall not take or keep, or offer to Sale, any of the young Fry during that Season, under the like Penalties.

No *Sea-Trouts* shall be taken in any of the said Rivers or Creeks, or Arms of the Sea in the said Counties, after the 30th of *June* to the 11th of *November*, under the like Penalties.

All which are to be levied by a Warrant, under the Hand and Seal of the Justices, before whom the Conviction was made, by Distress and Sale of the Offender's Goods; and for Want of Distress, then to the House of Correction.

9 An. 12, c. 26.

The Lord Mayor and Aldermen of *London*, and the Justices of Peace of the respective Counties, for all Offences in their several Jurisdictions, in wilfully killing or exposing to Sale any *Spawn*, Fry, or Brood of Fish, or Spat of *Oysters*, or any unwholesome Fish, or in catching, killing or destroying any Fish out of Season, or by exposing such Fish to Sale, or by wilfully buying, harbouring, receiving, or using as Food for Hogs, or otherwise, any *Spawn*, Fry, &c. or catching *Salmon* between 24 *August* and 11 *November* in any Year, may upon View or Complaint made, examine and determine the same on Oath, and upon Conviction impose any Fine not exceeding 10 *l.* nor less than 5 *s.* to be levied by Distress and Sale of the Goods of the Offender, unless the Fine be immediately paid, or good Security given to abide the Order of the Court of Conservancy upon the Conviction by the Lord Mayor, &c. or the Court of Quarter-Sessions upon the Conviction by the Justices, or one of them, in Case the Offender shall think fit to appeal to either; and if no Distress can be had, then to be committed for any Time, not exceeding two Months, to the House of Correction, without Bail.

If the Offence is committed within the Jurisdiction of the Lord Mayor, then one Moiety of the Fine shall be paid to him, the other to the Informer; and if elsewhere, then one Moiety to the Poor of the Parish where the Offence shall be committed, the other to the Prosecutor.

A Warrant to levy the Fine.

To the Constable of, &c.

Surrey, to **W** Hereas Complaint hath been made unto me
 wit, R. B. Esq; one of his Majesty's Justices, &c.
 That T. P. of L. in the said County, Labourer, did on the
 29th Day of this Instant July, at L. in the County aforesaid,
 * kill and destroy the Spawn of Fish in the River, &c. con- * Or as the
 trary to the Statute in that Case made and provided, of which Offence is.
 said Offence the aforesaid T. P. was on the, &c. duly con-
 victed on Oath before me; by Reason whereof I did then impose
 the Fine of † 20s. upon him: These are therefore to require † Any Sum not
 you forthwith to levy the said Sum of 20s. upon the Goods exceeding 10l
 and Chattels of the said T. P. by Distress and Sale thereof; and nor less than
 that you pay one Moiety thereof to S. E. of, &c. who is the Pro- 5s.
 secutor, and the other Moiety to the Church-wards and Over-
 seers of the Poor of the Parish of L. where the said Offence
 was committed, for the Use of the Poor thereof. Given, &c.

Master of a Vessel importing or selling Fish in England, 1 Georgii 1.
 taken by any Foreigner or Stranger, (except Protestants c. 18.
 dwelling here) or exchanging them for Goods; and being Sect. 1. f. 2.
 lawfully convicted before one or more Justices of the County
 where the Offender lives, shall forfeit 20l. a Moiety to the
 Informer, the other to the Poor of the Parish where the Of-
 fence was done, to be levied by Distress, &c. and in De-
 fault thereof, to be committed for twelve Months.

Nets for Fishing on the Coasts of England, (except for Sect. 4.
 Herrings, Pilchards, Sprats, Lawdian) their Mesh shall nor
 be less than three Inches and one Half from Knot to Knot;
 and no false or double Bottom, or any Net of legal Size be-
 hind the other; the Penalty is Forfeiture of the Nets, and
 20l. to be recovered as before.

Such illegal Nets proved to be forfeited, shall by a War- Sect. 6.
 rant from a Justice be ordered to be burnt.

		Inches.		Inches.	Sect. 7.
Every of these Fi- shes must be In- ches long from the Eye to the Extent of the Tail, Viz,	Basse	12	Mullet	12	
	Bret	16	Pearl	14	
	Brill	14	Plaice	8	
	Codlin	12	Sole	8	
	Dab	8	Turbet	16	
	Flounder	6	Whiting	12	

Fish brought to Shore, exposed to Sale, or changed for Sect. 7.
 Goods, not of that Length, are forfeited, and 20s. for every
 Offence;

Offence; one Moiety to the Informer, the other to the Poor of the Parish, to be levied as aforesaid, and for Want of a Distress, to be sent by a Justice's Warrant to the House of Correction, and to be whipp'd and kept at hard Labour six Days.

Sect. 9. The Prosecution must be within one Month after the Offence.

Sect. 14.	Bringing any Nets, or doing any Thing in these Rivers, whereby the <i>Salmon</i> , not 18 Inches or more from the Eye to the Middle of the Tail, may be hindered from going up to Spawn.	<table border="0"> <tr> <td data-bbox="811 405 970 660"> <i>Aire,</i> <i>Calder,</i> <i>Derwent,</i> <i>Dee,</i> <i>Dun,</i> <i>Eure,</i> <i>Mercy,</i> <i>Owze,</i> </td> <td data-bbox="970 405 1080 660"> <i>Ribble,</i> <i>Severn,</i> <i>Swale,</i> <i>Team,</i> <i>Tees,</i> <i>Trent,</i> <i>Ware,</i> <i>Wye.</i> </td> </tr> </table>	<i>Aire,</i> <i>Calder,</i> <i>Derwent,</i> <i>Dee,</i> <i>Dun,</i> <i>Eure,</i> <i>Mercy,</i> <i>Owze,</i>	<i>Ribble,</i> <i>Severn,</i> <i>Swale,</i> <i>Team,</i> <i>Tees,</i> <i>Trent,</i> <i>Ware,</i> <i>Wye.</i>
<i>Aire,</i> <i>Calder,</i> <i>Derwent,</i> <i>Dee,</i> <i>Dun,</i> <i>Eure,</i> <i>Mercy,</i> <i>Owze,</i>	<i>Ribble,</i> <i>Severn,</i> <i>Swale,</i> <i>Team,</i> <i>Tees,</i> <i>Trent,</i> <i>Ware,</i> <i>Wye.</i>			

Sect. 14. Or he who shall, from 31 *July* to 12 of *November*, hurt any *Salmon* with Nets, or who shall, after the 12th of *November*, fish in any of these Rivers with Nets, not allowed by the Statutes 1 *Eliz.* and 30 *Car. 2.* and shall be convicted by any Justice, &c. where the Offence was committed, shall forfeit 5 *l.* besides the Fish and the Nets, which must be cut into Pieces.

Sect. 15. *Salmon* sent to *London*, &c. from any of the said Rivers to Fishmongers, shall not weigh less than six Pounds; any Person buying, selling, or sending a *Salmon* of less Weight, and being thereof convicted before a Justice, &c. forfeits 5 *l.* and the Fish bought.

Sect. 15. A Moiety of these Forfeitures to the Informer, the other to the Poor of the Parish where the Offence was committed, to be levied by Warrant of a Justice, &c. by Distress, &c. before whom the Conviction was, and for Want thereof to be sent to the House of Correction for three Months.

Sect. 17. An Appeal lies to the Quarter-Sessions, whose Determination shall be final.

9 Geo. The Black Act. Any Person, who after 1 *June* 1723 shall be armed and having his Face black'd and disguised, shall unlawfully take away, or steal any Fish out of any River or Pond, or break down any Head or Mound of a Fish-Pond, whereby the Fish shall be lost, shall be guilty of Felony without Benefit of Clergy.

A Warrant to levy the 5 l. forfeited.

To the Constable of, &c.

Kent, to **W** Hereas Complaint hath been made unto D. P. 1 Geo. 1. c. 12.
 wit, *Esq;* one of his Majesty's Justices of the Peace
 of the said County, that I. E. of, &c. did on the 23d Day of
 July last past, import into D. in the said County, and in the
 Realm of England, a certain Quantity of fresh Fish taken by
 Foreigners and Strangers, other than the Protestant Strangers
 dwelling in England*, contrary to the Statute in that Case
 made and provided, of which said Offence the aforesaid I. E.
 was lawfully convicted before me on the Day aforesaid, by
 Reason whereof he hath forfeited the Sum of 20 l. These are
 therefore to require you to levy the said Sum of 20 l. on the
 Goods and Chattels of the said I. E. by Distress and Sale there-
 of, rendring to him the Overplus, if any such should be; and
 that you forthwith pay one Moiety thereof to R. P. of, &c.
 who first informed me of the said Offence, and the other Moiety
 to the Church-wardens and Overseers of the Poor of the Parish
 of D. where the same was committed, for the Use of the Poor
 thereof; and if no such Distress can be had, that then you cer-
 tify me thereof, that such further Course may be taken therein
 as directed by Law. Given under my Hand and Seal, &c.

* Or fish on
 the Coasts of
 England with
 a Net with
 Meshes of less
 than 3 Inches
 and an Half
 from Knot to
 Knot, to catch
 Fish, other than
 Herrings,
 Pilchards, Sprat
 or Lividnian,
 contrary to, &c.
 or as the Of-
 fence is, muta-
 tis mutandis.

A Warrant against one keeping Nets, be-
ing not qualified, viz. to search for
them.

Suffex, to **W** Hereas Complaint hath been made unto me, See Tit. Fish,
&c.
 wit, *That the Fish in, &c. have lately been de-*
stroyed by some idle and disorderly Persons not qualified by Law,
either as having a free Fishery, or being Owners thereof, or
otherwise lawfully authoriz'd to fish in navigable Rivers; and
that several Nets, Leaps, Pitches, and other Instruments and
Engines, are kept in the Parish of, &c. for the Destruction of
Fish, by Persons who are not Makers or Sellers thereof, contra-
ry to the Statute in that Case made and provided: These are
therefore to require you forthwith to enter into and search the
Houses, Out-houses, and other suspected Places of Persons with-
in your Parish, or of such who you are informed have any Nets
or other Instruments for Destruction of Fish, and to seize the same
where you shall find any such, and likewise to bring the Person,
in whose House it shall be found, before me, or some other Ju-
stice of the Peace for this County, to answer the Premises. And
hereof fail not, &c.

A War:

A Warrant to burn the Nets.

To the Constable, &c.

See Tir. Dogs,
a Warrant for
keeping Nets,
being not qual-
ified.

Kent, to **W** Hereas I. E. of, &c. was on the Day of the
wit, Date hereof lawfully convicted before me,
D. P. Esq; &c. for fishing on the Coasts of England with a
Net with Meshes of less than three Inches and an Half from
Knot to Knot, contrary to the Statute in that Case made and
provided, by Reason whereof the said Net is forfeited: These
are therefore to require you forthwith upon the Receipt hereof
to burn, or cause the said Net to be burnt, and for your so do-
ing, this shall be your Warrant. Given under my Hand and
Seal, &c.

One claimed *solam piscariam* (the sole Fishing) in the
River Exe, by a Grant from the Crown, which he could not
have, because the Subject hath a Right to fish in all naviga-
ble Rivers.

Wears.

{ Erected along the Sea-shore, Haven or Creek,
or within 5 Miles thereof, the Offender
forfeits 10 l. to the King and Prosecutor.

37. H. 8. 6.

He who unlawfully breaks down a Fish-Pond Head, or
fishes without Leave of the Owner, must be committed for
three Months, and be bound with Sureties to his good Beha-
viour for seven Years, and the Party grieved may in the Ses-
sions recover treble Damages; but upon Acknowledgment
of his Offence in Sessions, and satisfying the Party grieved,
the Justices may release the Good Behaviour. 5 Eliz. 21.

An Indictment for fishing without the
Consent of the Owner.

Middlesex, to **T**HE Jurors, &c. That J. O. of, &c. in
wit, the said County, Yeoman, on the third
Day of January in the third Year of the Reign, &c. with
Force and Arms did break the Close of one A. S. at P. in the
said County, and did there unlawfully fish in his separate
Fishery, and did then and there take and carry away his Fish,
that is to say, two Salmon, and One hundred Trouts, &c. to
the Value of five Pounds, and did tread down and consume his
Grass there lately growing, to the Value of forty Shillings, and
did other Injuries to him, against the Peace, &c.

An Indictment for fishing in a Pond, &c.

Suffex, to **T**HE Jurors, &c. That J. O. of H. in the said County, Labourer, on the first Day of May in the fifth Year of the Reign, &c. and on divers Days and Times as well before as after the said first Day of May, at H. aforesaid in the said County, with Force and Arms, did unlawfully fish with Nets and other Engines in a certain Pond there, being the Freehold of A. S. Gentleman, and did then and there take and carry away divers Fish, that is to say, One hundred Trouts, fifty Carp, &c. against the Peace, &c.

See also the Act 13 Geo. 1. for encouraging and promoting the Fishery, &c. in Scotland. See likewise 2 Geo. 2. for improving the Oyster Fishery in the River Medway.

flax. See Wool.

Force Lawful.

IN what Cases Doors may be broke open :

Viz. To apprehend. { For Treason, Felony, or Suspicion thereof,
Any Person who hath wounded another very dangerously, and flieth for the same to a House.
A Popish Recusant excommunicate.

2. An Affray in the House, and the Doors shut.
3. Upon a Warrant for the Peace or Good Behaviour, *quære.*
4. Upon a *Capias Utlagatum* in a Personal Action, and upon a *Capias pro fine* directed to the Sheriff.

A Man was outlawed for Want of an Appearance; the Sheriff came to his House with a *Latitat*, and with a *Capias Utlagatum*, without the Privy of the Plaintiff, and the outward Door being open, he entered; then he and his Company shut the Door and drew their Swords, and went up to the Chamber where the Man was in Bed, and knocked gently at the Door, which was lock'd, but did not tell who they were, or for what they came; but the Door not being immediately opened, they broke it open, and arrested the Person upon the *Latitat*, and took Bond for his Appearance.

Hob. 263.
Waterhouse
against Salt-
marsh.

and

Force Lawful. Forcible Entry.

and 40 s. for suing out a *Superfedeas* to the Outlawry ; but the Sheriff was fined 200 l. for this Outrage and Terror, and for not telling who he was, that the Door might be opened without Violence.

Hob. 62.
Park and Percival
against
Evans.

So where the Sheriff had a *mesne Process* against one, and came to his House and knocked gently at the Door, the Wife open'd it a little to see who it was, and he forced in with his Sword drawn, and broke open the Door where the Defendant lay ; this was unlawful, because the first Entry was so, for the Opening of the Door was by Craft and Violence, which was intended.

1 Vent. 306.

But if upon such *Process* a Bailiff catch the Defendant by the Hand, as he held it out of the Window ; this is such a Taking, that he may justify the Breaking open the House.

5. Upon a Forcible Entry or Detainer, found by Inquisition before the Justices, or upon their own View.
6. Upon a Judgment in Ejectment ; but then the Officer must signify the Cause of his Coming. 5 Rep. 91.
7. In all Cases where the King is Party, or hath an Interest, &c.

Jones 429.

But you cannot break open a Door upon an Execution at the Suit of a common Person, for 'tis illegal ; and if the Officer is kill'd in doing it, 'tis only Manslaughter.

Flight. See Forfeiture.

Forcible Entry.

AT Common Law, where a Man had a Title to Lands, he might not only enter but detain by Force ; and tho' it was done in the Presence of an Officer, yet he had no Power to interpose, unless some great Mischief (as Murder, &c.) was committed.

And this was the Occasion of making the Statute of 5 R. 2. c. 8. which prohibits the Force, tho' the Person had a Title, and appoints that the Justices should inquire into it, and not otherwise ; that is, in their Sessions.

This being for that very Reason found to be inconvenient, a quicker Remedy was provided to remove the Force, by the Statute of 15 R. 2. c. 2. which gives one or more Justices Authority to take sufficient Power with them, and to view the Place where the Entry and Detainer is, by Force, and to commit the Offenders, there to remain till they have made Fine and Ransom to the King.

By this Statute likewise, the Sheriff and all others are to be assistant to the Justices, upon Pain of Fine and Imprisonment.

But still there remained some Inconveniences which this Law did not remedy.

1. As if the Entry was peaceable, and the Detainer by Force.
2. If the Persons were gone before the Justices came, they could proceed no farther.
3. They had not Power to give Restitution to the Party grieved.

All these Matters were remedied by the Statute of 8 H. 6. c. 9. which gives Power to one or more Justices, by Warrant, to command the Sheriff to summon a Jury to inquire of the Force, and to seize the Tenements as well in the Absence as Presence of the Offender.

It likewise appoints the Statute of 15 R. 2. to be put in Execution, altho' the Detainer by Force was after a peaceable Entry; and all at the Costs of the Party grieved.

It likewise inflicts the Penalty of 20 *l.* upon the Sheriff neglecting his Duty, to be recovered by Indictment at Sessions, and divided between King and Prosecutor.

But the Justices cannot make Inquiry into a Force, after a peaceable Possession for three Years. But this must be intended where the Estate is continued, for if Lessee who has been in Possession under a Lease for ever so many Years, after the Term expires, continues Possession by Force, this is a Forcible Detainer. 2 Cro. 199.
Snigg and
Shirton.

And by the Statute of 31 Eliz. c. 11. §. 3. no Restitution can be made upon Indictment of Force, &c. where the Party had such a quiet Possession for three Years, as aforesaid.

Afterwards some Doubts arising, whether the Justices had any Power but only in Cases of Freehold; this was the Occasion of making the Statute of 21 Jac. 1. c. 15. by which they have Power to give Restitution to Tenants for Years, Tenants by *Elegit*, Statute, &c. Copyholders, &c. as well as to Freeholders, put out or detained by Force; so that now a compleat Remedy is given,

1. Against those who enter with Force, and continue the Possession peaceably.
2. Against those who enter peaceably, and hold out with Force.
3. Against those who enter and hold out with Force.

If the Proceedings are upon this Statute of 8 H. 6. of Necessity there must be a *Disseisin* of the Freehold alledged; 'tis a Term of Art not to be supplied by any other Word.

What is a Forcible Entry.

It must be *manu forti* (with a strong Hand), and 'tis Force if he enter to commit a Trespass, though the Party doth not quit the Possession; but if the Entry is peaceable, then 'tis *Disseisin*, not Force; being provided with Weapons, threatening Life or Loss of Limbs, breaking open Doors, or entering the Doors being open, with unusual Armour or Weapons, ejecting or distraining for Rent with Force.

Style 135.

Cro. Eliz. 461.

Cro. Eliz. 93.

S. P.

2 Bulst. 258.

Noy 155.

The Reason why it was set forth to be done *manu forti*, is to distinguish it from all other Trespasses; these are peculiar Words adapted to an Indictment for this Offence: And therefore *vi & armis*, or *fortitudine & potentia magna* (with Force and Arms, or with Strength and great Power), or such like Words, though they may signify the same Thing, yet will not make the Indictment good.

Forcible Detainer.

By denying Entrance to the Justice though by one Person.

By keeping Cattle in another Man's Ground, claiming Right of Common, &c.

Menacing to keep the Possession, tho' no Force used.

Resisting, threatening, or rescuing in Cases of Distress for Rent or Common, one Justice may remove the Force, record it upon View, but cannot make Restitution.

One alone, without the Help of another.

What Persons may be guilty of both.

Sid. 97, 414.
contra.

Indictment for a *forcible Entry and Detainer*, the Jury find the *Entry with Force*, but the *Detainer peaceable*; and this was held sufficient to grant Restitution upon it.

So where the Jury found *quoad* the Entry *Ignoramus*, and *quoad* the Detainer *Billa vera* (as to the Entry not found, and as to the Detainer a true Bill); and upon Restitution awarded by the Justices of Peace, *B. R.* set it aside, and granted a Re-restitution, because the Indictment being intire for the Entry as well as the Detainer, and the Jury having found but one, 'tis therefore void. *Yelv.* 99, 100. 2 *Cro.* 151. *S. C.*

Palm. 419.

Indictment *quare in medietatem intravit* (why he hath entered into a Moiety) is void, for the Entry must be into the Whole.

Who may be guilty of it.

An Infant above fourteen, and a *Feme covert*, for which they may be committed and fined, though 'tis Prudence not to commit the Infant, and the Husband shall not be charged with the Fine of his Wife.

If several come with an Intention to enter, and one commit the Force, all are guilty, tho' the other are peaceable.

If more than three, 'tis a Riot; and then the two next Justices may inquire within a Month by a Jury.

The Power of the Justices upon the Statutes of 1 R. 2 c. 2. One Justice.

He may go to the Place and take the Assistance of the Sheriff, if he thinks fit, may break open the Door if resisted, and may arrest and commit the Offenders; he may command any one to assist him, and commit and fine those who refuse.

If

If he sees the Force, he may record it, and commit the Offenders, for his View is a Conviction; and this Record being certified in *B. R.* the Court will grant Restitution, and assess a Fine. 8 Rep. 120. a. Dr. Bombam's Case.

The Defendant was convicted for a forcible Detainer, upon * the View of a Justice of the Peace; setting forth that he held a *Chamber in an House* in such a Street and Parish by Force, but did not shew whose House it was, nor whether the Chamber was backward or forward, or how many Pair of Stairs high, and the Commitment was to *Newgate*; but it did not set forth that *Newgate* was the County Gaol, and the Statute expressly requires that the Commitment should be thither. * 15 R. 2. c. 2:

But the Court would not intend that there were two Chambers on one Floor; so they held that the Chamber was sufficiently described; however, the Conviction was quash'd, for tho' they would intend that *Newgate* was the County Gaol; yet the Words in the Record being all in the preterperfect Tense, when they should be in the present Tense; for that Reason it was quash'd.

If the Offenders are gone before the Justices come, then they may direct their Precept to the Sheriff to impanel 24 Men of 40 s. *per Annum* Freehold each of them; and 12 must be sworn to inquire of the Force; and when found, the Justices may either themselves put the Party in Possession, or make a Precept to the Sheriff for that Purpose: And this must be done, though they view the Force, if they intend to put the Party into Possession. Upon the Statute of 8 H. 6. two Justices.

The same Justices, before whom the Force was found, having made a Precept to the Sheriff to restore the Party, may grant a *Superfedeas* to stay Restitution, if they see Cause.

But if the Party doth not think fit to apply himself to the Justices, then he may have an Action of Trespass against the Defendant, (who had no Title of Entry, and entering with Force) and may recover treble Costs and Damages; but if his Entry was upon good Title, tho' with Force, then you must proceed by Indictment.

Lawful Detainer, { Continuing in Possession three Years peaceably, he may justify the Detainer by Force.

But must not resist the Justice when he comes to view.

This Possession may be pleaded to an Indictment for a Force, which will not only excuse the Fine and Commitment, but prevent the Restitution.

The Entry must be *vi & armis*, or peaceably, and detaining with Force, according to the Words of the Statute of 8 H. 6. Roll. Abr. 2. pag. 80.

The Quality of the Thing upon which the Entry was made must also be set forth, as into a Messuage, Meadow, Wood, &c. for entering into *Tenementa* (Tenements) generally, is not good, because of the Incertainty; for it may extend to a House or Cottage. 2 *Rol. Rep.* 46. So an Entry into two Closes *Prati sive Pasturæ* (Meadow or Pasture) is not good. *Rol. Abr.* 2. pag. 81.

It must be either *manu forti*, or *multitudine Gentium*, (with a strong Hand, or with a Multitude of People), and it must conclude *adhuc extratenet* (yet detains), for without these Words there cannot be any Restitution; and likewise *contra formam Statuti* (against the Form of the Statutes). *Rol. Abr.* 2. pag. 82.

It must be certain, therefore an Entry into *Messuagium*, or *Cottagium sive Tenementum* (a Messuage or Cottage or Tenement), is void. *Rol. Abr.* 2. p. 80.

But in *Clausum* (into a Close) is good, for that is certain enough.

And as to the *Certiorari*, that must be delivered in open Sessions, which is a *Superfedeas*.

But the Traverse is no *Superfedeas*, because the Force being found upon the Indictment, the Justice may restore the Party grieved, or otherwise may certify the Indictment to *B. R.* but he that tendereth the Traverse must bear all the Charges of the Prosecution, both before the Justice, and in *B. R.*

If the Justice will try the Traverse presently, it must not be by the Jury who found the Force, but by a new Jury to be returned by the Sheriff the next Day; and this Traverse must be in Writing.

The Justice may direct his Precept to the Sheriff to impanel a Jury *ut prius*; and upon Default of their Appearance, may award an *Alias* and *Pluries*, and return 40 s. Issues upon the second Precept on each of the Jury, and 5 l. Issues on the third Precept, and at every Time afterwards double.

The Expulsion must be out of House or Lands, and so set forth in the Indictment.

In the Indictment the Estate must be set forth, for 'tis not enough to alledge generally that *Possessionatus fuit* (he was possessed), because a Tenant at Will may be so possessed, and he is not within either of the Statutes. *Sid.* 102.

But since I have mentioned the Statutes, I must likewise take Notice, that 'tis not the best Way to recite them in the Indictment; for if misrecited in any particular, it will be quash'd. *Cro. Eliz.* 93, 96, 106, 307, 697. 1 *Bull.* 218.

The Indictment was for a Forcible Entry into a *Copyhold*, viz. That the Defendant *ejecit & disseisivit* (hath ejected and disseised), for which Reason it was quash'd, because *Disseisin* is applicable only to *Freehold*; and therefore in all Cases, except for a *Freehold*, it ought to be *ejecit, expulit & amovit* (that

King and
Holmes,
1 Mod. 73.

Vide Queen
and Winter,
Pasch. 4 Ann.
Holt 324. seems
contra.

Jury.

Indictment.
1 Mod. 73.

(that he hath ejected, driven out, and removed). *Raym.* 67.

4 *Inst.* 176.

And even in the Case of Freehold, *expulit seu disseisvit* (driven out or disseised) is void, because it is in the Disjunctive; for there must be an Expulsion and *Disseisin*. 1 *Rel. Rep.* 406.

And so is *disseisvit*, without shewing what Estate he had. 1 *Vent.* 306.

If it is for *disseising* the Landlord, and expelling or driving out the Tenant, though the Entry was made by Command of the Landlord, and he opposed Restitution, yet it was granted by *B. R.* for they may reform the several Degrees of Wrongs; but if it had been only for expelling the Tenant, he could not have Restitution. *Yelv.* 81.

It must be *adhuc existens liberum Tenementum* (as yet being a Freehold Tenement), as well as *adtunc* (then was). 2 *Cro.* 214, 639. *Lev.* 1. pag. 90. That it lies for Forcible Entry into a Church.

1. Quiet Possession for three Years before the Inquisition found. 31 *Eliz. c.* 11. *Raym.* 84. Pleas to an Indictment.

This must be understood of a Term of Years; but if it had been a *Freehold*, then he must set forth that he was seised, &c. and was in Possession for three Years, &c. and 'tis not material to shew how seised, because 'tis not the Title, but the Possession which is requisite to be alledged. *Sid.* 156.

2. The Defendant may tender a Traverse.
3. He may demur to the Insufficiency of the Indictment.
4. And plead to the Insufficiency of the Jurors, not having 40 s. *Freehold*.

5. May bring a *Certiorari*, which is a *Superfedeas* for Tithes, Rents, &c. Or what it is.

To remove a Force out of a Parish-Church or Parsonage Houses, though there is another Remedy by *vi Laica remouenda* (removing the Laity with Force). *Sid.* 101.

After Enquiry, the Justice may break open the House, and restore the Party himself, for none but he who is actually put out of Possession can be restored. Restitution.

Where they find a Force, and make a Record of it on their own View, they may commit the Offenders, but cannot grant Restitution. 1 *Vent.* 308. *Sid.* 156.

It must be of House or Land, it cannot be of Rent, Common, Advowson, &c. *Quære.*

If the Defendant traverse the Indictment, the best Way for the Justice is to certify it into *B. R.* *Sid.* 287.

But after a Traverse, the Court cannot grant Restitution. 1 *Vent.* 365. But in *Dyer* there is a contrary Opinion. *Dyer* 122.

They cannot award Restitution after a *Certiorari* to remove an Inquisition of a Forcible Detainer.

Forcible Entry.

If the Justices certify, That Complaint was made to them of a Forcible Entry into an House; and thereupon they went thither, and found it true, and removed the Force, and fined the Defendant 20 *l.* this Certificate is not good, because they do not shew the Time when the Complaint was made, which they ought to do, because such Certificate is in Nature of an Indictment, and traversable. 2 *Rol. Rep.* 39.

No other Justice or Justices (except *B. R.*) but he or they before whom the Force is found, can award Restitution.

But then the Force must be found by an Inquisition of twelve Men, or otherwise the Justice may be punished; but the Entry and Holding with Force being found, the Justice may release by Virtue of the Statute of 8 *H. 6. c. 9.* and restore the Party to his Possession.

Or he may direct his Precept to the Sheriff for that Purpose, *Teste* by himself. *Dyer* 187.

And if the Sheriff return, that he cannot make Restitution, because he was resisted, he shall be fined, for he may raise the *Posse Com'* (the Power of the County.)

The Justices, upon an Indictment found, may give Restitution to a *Freeholder*, to a Tenant for Years, or by Copy of Court-Roll, to a Tenant by *Elegit*, Statute Merchant or Staple. 21 *Jac. 1. c. 15.*

One Jointenant or Tenant in Common putteth out the other: *Quære* what the Justice can do there, because his Entry and Possession was lawful.

If an Indictment be removed, and no Prosecution the next Term, the Court may award Restitution.

A Man cannot justify the Breaking open of an House, by Virtue of a Warrant from a Secretary of Statute; and no House can be broke open, unless there is a Civil Officer present.

But if a Man hath a Warrant to apprehend another, and he breaks open the Door to execute it, and so mistakes the Law, he is not guilty of Felony, for that was not Design. Now since there must be a Felonious Intent to make a Man guilty of Felony; and there being no such Intention appearing, the Party is only a Trespasser.

If after a Door is broke open, one of the Company steals any Thing, 'tis Felony only in him, and not in the rest, unless they were assenting to it.

The Record of a Forcible Entry upon
the View of a Justice, upon the Statute
of 15 R. 2.

Middlesex, to **I** H. P. Esq; one of the Justices of our Sovereign Lord the now King, assigned to keep the Peace in the said County, do certify, that on the fifth Day of January in the fifth Year of the Reign, &c. J. O. of H. in the said County, Yeoman, complained to me, That T. P. of, &c. and other Disturbers of the Peace of our said Lord the King, unknown to me, on the fifth Day of January in the Year above-mentioned, did peaceably and quietly enter into one Messuage with the Appurtenances situate at H. aforesaid in the said County, then and yet being the Freehold of R. B. Esq; and in Possession of the said J. O. for the Term of seven Years yet to come, and afterwards, that is to say, on the said fifth Day of January in the Year above-mentioned at H. aforesaid in the said County, with Force and Arms, that is to say, with Staves, Swords, &c. did unlawfully and with a strong Hand expel, drive out and remove the said J. O. from the said Messuage, and the said J. O. being so expelled, driven out and removed from the said Messuage with the Appurtenances, as aforesaid, they did then and there unlawfully, and with Force detain and hold the same, to the great Damage of the said J. O. and against the Peace of our said Sovereign Lord the now King, and against the Form of the Statute in such Case made and provided; and therefore the said J. O. prayed a Remedy from me, and to be relieved in this Behalf; thereupon I the said H. P. immediately did go in Person to the said Messuage with the Appurtenances, and did then and there find the said T. P. forcibly and unlawfully holding and detaining the said Messuage with the Appurtenances from the said J. O. against the Form of the Statute aforesaid; whereupon I the said H. P. did then and there cause the said T. P. to be taken and arrested, and to be sent to the Gaol of H. in the said County there to abide in safe Custody till he should find sufficient Surety before me, or any other Justice of our said Lord the King assigned to keep the Peace in the said County, personally to appear at the next General Sessions of the Peace of our said Lord the King to be held in the said County, to answer the Trespass and Contempt aforesaid, and that in the mean Time he should be of Good Behaviour. In Witness whereof I the said H. P. have put my Hand and Seal to this Certificate the seventh Day of January in the fifth Year of the Reign, &c.

Another Record of a Forcible Entry.

* If it be a Freehold; otherwise it must be, Did expel, drive out, and remove.

Suffex, to **B**E it remembred, That T. P. of, &c. on, &c. wit, complained to me Sir E. S. Knight, one of the Justices assigned to keep the Peace of our said Lord the King in the said County, That J. O. and J. S. of, &c. and other Disturbers of the Peace of our said Lord the King unknown, with a strong Hand did enter into the Mansion-house of him the said T. P. in H. aforesaid, and did * thereof disseise the said T. P. and with a strong Hand and armed Force did yet hold the said House, and therefore prayed me to apply a Remedy in this Behalf; and after having heard the said Complaint and Petition, I immediately went in Person to the said House, and then found the said J. O. and J. S. with a strong Hand and armed Force, that is to say, with Swords, Staves, Guns, &c. holding the said House, contrary to the Form of the Statute in such Case made and provided; and therefore I the said E. S. then and there took the said J. O. and J. S. and put them in the next Gaol of our said Lord the King at H. in the said County, there to remain as convict of the said Forcible Entry and Detainer, by my Record, and View, until they shall have made Fine and Ransom to our said Lord the King for the Trespass aforesaid. Dated at H. aforesaid under my Seal the Day and Year above mentioned.

A Precept to the Sheriff in the Nature of a *Venire facias*, to summon a Jury.

Upon the Stat. of 3 H. 6. Suffex, to **S**IR J. P. Baronet, one of the Justices assigned to wit, keep the Peace of our Lord the King in the said County, To the Sheriff of the same County greeting: I command you on the King's Behalf to cause to come before me, at V. in the said County, on the eighth Day of January next ensuing, twenty-four honest and lawful Men of the Neighbourhood of V. aforesaid, each of whom must have Land or Tenements of the yearly Value of forty Shillings by the Year at the least above Reprises, to inquire upon their Oath for our said Lord the King of a certain Forcible Entry made into the Messuage of one J. O. at V. aforesaid, contrary to the Form of the Statute in such Case made and provided; and do you see that you return Issues upon each of the said Jurors by himself in this Behalf impanelled twenty Shillings, at the said Day; and do you in no wise omit this, under the Penalty of twenty Pounds; and do you have there then this Precept. Witness me the said Sir J. P. Baronet, the thirtieth Day of November in the ninth Year of the Reign, &c.

An

An Inquisition upon the Force.

AN Inquisition taken for our Sovereign Lord the King at L. in the County of Suffex, on the eighth Day of January in the ninth Year of the Reign, &c. upon the Oath of C. L. R. R. H. S. W. N. &c. before Sir J. P. Baronet, one of the Justices assigned to keep the Peace of our said Lord the King in the said County, as also to hear and determine divers Felonies, Trespasses, and other Misdeeds committed in the said County, who say upon their Oath, that J. O. of H. in the said County, Yeoman, was lawfully and peaceably seised in his Demesne, as of Fee, of and in one Messuage with the Appurtenances in L. aforesaid, and did continue his peaceable Possession aforesaid, until J. B. of, &c. and J. S. of, &c. and other Malefactors unknown, on the thirtieth Day of December last past with Force and Arms, that is to say, with Staves, Swords and Guns, did enter into the Messuage aforesaid with the Appurtenances, and did thereof disseise the said J. O. and did hold the same with Force, and from the said thirtieth Day of December to the Day of the Taking of this Inquisition, with a strong Hand and armed Force did keep out, and yet do keep out the said J. O. being so disseised and driven out of the said Messuage aforesaid, to the great Disturbance of the Peace of our said Sovereign Lord the King, and contrary to the Form of the Statute in such Case made and provided, when none of them, or any other, whose Estate he or they have, hath had the Occupation of the said Messuage with the Appurtenances, or any Part thereof, within three Years next before their Entry aforesaid, nor at any other Time, to the Knowledge of the Jurors aforesaid.

The Entry and Expulsion being thus found by the Jury, the Justice may make a Precept to the Sheriff for Restitution, thus :

Suffex, to **J.** P. Baronet, and Justice of the Peace for the wit, **J.** said County, to the Sheriff thereof Greeting :
Whereas by a certain Inquisition taken before me on the eighth Day of January last past, at V. in the County aforesaid, upon the Oath of L. L. R. B. &c. according to the Form of the Statute in that Case made and provided, it was found that J. B. and J. S. and others, (prout in the Inquisition) as by the said Inquisition of Record doth more fully appear : These are therefore in his Majesty's Name to require you to go to the said Messuage and other the Premises, and cause the same with the Appurtenances to be re-seised, and the aforesaid J. O.

Forcible Entry.

to be restored thereunto, and to his full Possession thereof, in as large and ample Manner as he was before the said Entry was made. And hereof fail not. Given under my Hand and Seal, &c.

A *Mittimus* of such who hold Lands, &c. by Force.

Sussex, to **T** P. Esquire, a Justice of the Peace for the
 wit, County aforesaid: To the Keeper of the
 Common Gaol at H. in the said County, or to his Deputy
 there: Whereas on this present 9th Day of January in the
 Year 1703. Complaint hath been made unto me by W. R.
 of, &c. of a Forcible Entry made by several Persons into his
 Lands at, &c. I went immediately to the said Lands, where
 I found R. W. J. R. T. O. and S. P. of, &c. Labourers,
 forcibly and with strong Hand holding the Premises, against
 the Form of the Statute in that Case made and provided:
 Therefore I send you herewithal the Bodies of the said R. W.
 J. R. &c. being convicted of the said forcible Holding by my
 own View: Commanding you in his Majesty's Name to re-
 ceive them into your Gaol and Custody, and there safely to keep
 them, until they shall be from thence delivered by due Course of
 Law. Given under my Hand and Seal the Day and Year
 first above-written.

An Indictment for a Forcible Entry and Detainer.

Sussex, to **T** H E Jurors, &c. That J. O. of, &c. and
 wit, J. S. of, &c. having assembled themselves
 with other Offenders and Disturbers of the Peace of our said
 Lord the King, whose Names to the Jurors are unknown, and
 being armed in a warlike Manner on the ninth Day of January
 in the fifth Year of the Reign, &c. at H. in the said County,
 with Force and Arms, that is to say, with Staves, Swords,
 Guns, Stones, and other offensive and defensive Arms, did enter,
 and that each of them did enter into one * Messuage with the
 Appurtenances in H. aforesaid † in the peaceable Possession of

* If it had been
 one Tenement,
 it had been

naught. 3 Roll. Rep. 26.

† If it had been of a Freehold, it should be,
 Then being the Freehold of one R. N.

one R. N. of which said Messuage the said R. N. was * then and yet is possessed for the Term of seven Years yet to come, and that the said J. O. and J. S. and the other Malefactors aforesaid with Force and Arms did eject, drive out and remove the said R. N. from his Possession aforesaid, and the said R. N. being so ejected, they did unlawfully and with a strong Hand then detain from him, and † yet do detain from him the Possession of the said Messuage with the Appurtenances, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided.

1 Bulst. 177. Yelv. 28.
Indictment naught.

† The Omission of these Words

* The Word Then is necessary, because Restitution is to be awarded. 1 Vent. 23. Yet if the Indictment begin with the Day, Time and Place, all which follows shall be taken to be the same Time. had made the

There are many Niceties in drawing this Indictment; and first, as to the Entry into Lands, 'tis always necessary to say, *adunc existens liberum tenementum* (then being the Freehold); but to say, *adunc & adhuc* (then and yet), is repugnant, because it cannot be *adhuc* (yet) his Freehold, for he is disseised. 3 Bulst. 68. Noy 131.

But it ought to conclude with *extratenuerunt, & adhuc extratenent* (did detain, and yet do detain).

Yet in my Lord Rolls, we have a Case of an Indictment, that was quash'd for not setting forth, that the Entry was upon such a Place *adunc existens liberum tenementum* (then being the Freehold), and the later Authorities seem to agree with him.

The Offender must be named of a Vill and County, because Process of Outlawry lies against him for this Offence.

Then the Place, on which the Entry was made, must be certain; and therefore if 'tis laid to be on a Rood of Land, it is void.

Yet for entering into a Close, and not saying how many Acres, was held good.

It must always set forth the Estate of the Party grieved; and therefore if 'tis for a Term of Years, 'tis not sufficient for the Party to set forth, that *possessionatus fuit* (he was possessed) generally, but he must shew for how many Years; if it be for a Freehold, then he must say *existens liberum tenementum* (being the Freehold): 'Tis true, formerly it hath been held, that these Words are implied by the Word *Disseisvit* (did disseise), because a Man cannot properly be disseised of any Thing but a Freehold; but it hath since been adjudged otherwise. 2 Leon. 102. 4 Leon. 197. 1 Vent. 306. to the contrary.

It must likewise be *inde disseisvit* (disseised thereof), for if that Word is left out, 'tis naught. Noy 120.

But if the Word *illicite* (unlawfully) is left out, that will not hurt it; because disseised implied it. Noy 125.

On

In the Case of a Freehold. Palm. 426. Latch 109. Cro Eliz. 754. Scansby's Case. Het. 73. March 6. 1 Rol. Rep. 65.

Sid. 102. Cro. Eliz. 72. Harris's Case.

1 Bulst. 201.

1 Mod. 73. King and Holmes.

On Tenant by *Elegit*.

Suffex, to **T**HE Jurors, &c. That whereas R. J. of H. wit, in the said County, Yeoman, before the Justices of our said Sovereign Lord the now King of the Bench, in Hillary-Term in the fifth Year of his Reign, by Judgment of the same Court, did recover against T. P. of L. in the said County, Taylor, a certain Debt and Damages amounting to fifty Pounds, and the said R. J. did elect to be delivered to him for Satisfaction of the said Debt and Damages, all the Goods and Chattels of the said T. P. in the said County, (besides his Oxen and the Beasts of his Plough) and likewise a Moiety of all the Lands and Tenements of the said T. P. according to the Form of the Statute in such Case made and provided; and also whereas Sir R. F. Knight and Baronet, late Sheriff of the said County, by Virtue of a Writ of our said Sovereign Lord the King of Elegit, on Behalf of the said R. J. directed to the then Sheriff of the said County, bearing Date the twenty-third Day of January in the fifth Year, &c. according to the Exigency of the said Writ, did deliver to the said R. J. one Messuage in L. aforesaid of the yearly Value of five Pounds, being the Moiety of all the Lands and Tenements, whereof the said T. P. was seised in the County aforesaid at the Time of obtaining the said Judgment or ever afterwards, to hold to him and his Assigns as his Freehold, according to the Form of the Statute in such Case made and provided, until the said R. J. should levy the said fifty Pounds according to the Value of the Messuage aforesaid, by Virtue whereof the said R. J. did enter into the Messuage aforesaid with the Appurtenances, and was possessed thereof as Tenant by Elegit, and did quietly and peaceably continue his Possession thereof until the said J. O. of, &c. and other Offenders unknown, on the twenty fourth Day of January in the sixth Year, &c. by Force and Arms, that is to say, with Stawes, Swords and Guns did enter, and each of them did enter into the said Messuage with the Appurtenances, and with a strong Hand and armed Force did then eject, drive out and remove the said R. J. from his Possession aforesaid, and with such Strength and armed Force they have kept out the said R. J. being so ejected, driven and removed from the Possession of the said Messuage with the Appurtenances, from the said twenty-fourth Day of January in the Year above-mentioned, until this Day, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

On a Copyholder.

Sussex, to **T**HE Jurors, &c. That T. P. of H. in the said County, Gent. was seised in his Demesne as of Fee, at the Will of the Lord, according to the Custom of the Manor of H. in the * said County, of one Messuage with the Appurtenances in H. aforesaid, as Tenant by † Copy of the Court-Rolls of the same Manor, and ‖ being so seised thereof did peaceably and quietly a long Time continue his Seisin and Possession aforesaid, until J. S. of H. aforesaid, Blacksmith, on the twenty-fourth Day of January in the fifth Year, &c. with Force and Arms, that is to say, with Staves, Swords and Guns, did enter into the Messuage aforesaid with the Appurtenances, and with a strong Hand and armed Power did drive out and remove the said T. P. from his Possession and Seisin aforesaid, and with such Strength and armed Power hath kept out, and yet doth keep out the said T. P. being so ejected, driven out and removed from the Possession of the said Messuage with the Appurtenances, from the said twenty-second Day of January in the Year above mentioned to this Day, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

* Latch 182.

† Vent. 89.

‖ If it had been (was seised and possessed) it had been naught, because uncertain.

1 Vent. 109.

Forfeiture.

BY the Statute *de catallis felonum*, no Man taken for the Death of a Man, or other Felony, shall be disseised of his Lands or Chattels till he is convicted, but they must be view'd and scheduled by the Sheriff and lawful Men, and safely kept by Bail of the Prisoner, who is to give Security to answer to the Justices of the Chattels, or Price if demanded, saving to the Prisoner and his Family, his Necessaries whilst in Prison, and reasonable Estover, that if he is convicted, the Residue of his Chattels may remain to the King, if not, to himself, and *quare* how far this is repealed by 1 R. 5.

This is occasioned by the Transgression of some Penal Law, whereby the Offender loseth his Lands and Goods.

But this Difference is to be observed, that where Lands are forfeited, it shall relate to the Time of the Offence committed; but in Case where Goods and Chattels are forfeited, there shall be no Relation; for the Goods of the Felon are his own till Conviction or Attainder; and the Sheriff or other Officer ought not to remove them, because the Property is not

Forfeiture.

not altered 'till Conviction; but usually they secure the Goods of the Felon as soon as he is apprehended; but this is expressly against the Statute of 1 R. 3. c. 3. by which it is enacted, That none shall seise the Goods of any arrested for Suspicion of Felony, before he is convicted or attainted thereof, upon Pain to forfeit double the Value of the Goods, &c. to be recovered by the Party grieved, in an Action of Debt, &c.

If it is found by the Coroner's Inquest, that the Party *fugam fecit* (made flight), he forfeits his Goods, notwithstanding he should be afterwards acquitted of the Felony by the Petty Jury, and they should find that he did not fly for the same: So where a true Man is pursued as a Felon, and he flieth and waiveth his own Goods, those are forfeited as if they had been stolen; for *fatetur facinus qui judicium fugit*, (he that flies from Judgment [in some Sort] acknowledgeth the Guilt.)

Now the Reason of the Forfeiture in the first Case, is because the King hath a Prerogative to take the Advantage of that Record which is most for his Interest, and that is the Record of the Coroner. *Staundf. Pl. Coron.* 183. B.

If a Man is acquitted of the Felony, but the Jury find *quod fugam fecit* (that he fled for it), he shall lose his Goods which he had at the Time of the Acquittal, and not at the Time of the Flight. *Goldf.* 135.

	<i>Lands.</i>	<i>Goods.</i>
In Treason.	{ Lands in Fee or in Tail, or for Life or Years, after Conviction or Attainder.	{ All the Goods and Chattels of what Kind soever.

	<i>Lands.</i>
In Petit Treason.	{ In Fee, for a Year and a Day. In Tail, during Life of the Offender.

	<i>Lands.</i>	<i>Goods.</i>
In Felony.	{ In Fee-simple, for a Year and a Day from the Time of the Felony committed, and the Profits during Life of the Offenders.	{ Goods and Chat- tels from the Time of the Attainder or Conviction.

	<i>Goods only.</i>
In Man- slaughter and <i>Felo de se</i> , Pe- tit Larceny.	{ Offenders in these Cases forfeit Goods and Chattels.

Goods only.

In Chance-medly, and *se defendendo*. } Offenders forfeit Goods and Chattels, but they may have Pardon of Courfe.

Forgery.

THIS is an Offence at the Common Law, and likewise punishable by a particular Statute. 5 Eliz. 24.

If the Indictment is at Common Law, the Offender convicted must stand in the Pillory, be fined and imprisoned during the Pleasure of the Court. *Ray. 8.*

Mr. *Dalton* is of Opinion, That Justices of Peace cannot meddle with these Offenders, because they cannot take Notice of the first Conviction.

Besides, by the exprefs Words of the Statute of 5 *Eliz.* Justices of Assize, and of *Oyer and Terminer*, are to hear and determine this Offence. *Cro. Eliz. 87. Smith's Case, 697. Hunt's Case.*

Since the making this Statute, few Indictments have been brought for Forgeries at Common Law ; some there are, *viz.* Stylc 363.
one *Howell Gwynn* cut off a dead Man's Hand, and put a Pen and Ink in it, and signed and sealed a Deed with the Hand, and made Oath that it was the Hand-writing of *B.* and that he sealed and delivered the Deed ; he was convicted and fined 100 *l.* and was to stand in the Pillory two Hours at the Hall-Gate.

So one *Farmer* was convicted for a Forgery ; he demurs to the Indictment, and it was found against him, and had Judgment to stand in the Pillory, was fined 100 *l.* and imprisoned during Pleasure.

But since the Statute, many Indictments have been brought to punish the Offender of this Nature, who for the first + Offence is to be *set in the Pillory in some Market-Town, to have his Ears cut off there, and his Nostrils slit, and shall forfeit the Profits of his Lands to the King during his Life, and shall be committed also for Life.*

- + That is, for forging,
1. False Deeds;
2. Writings sealed;
3. Court Rolls;
4. Will, to the

Intent that the Freehold of the Lands, or the Right or Title thereof, may be troubled or charged.

Every Indictment brought upon the Statute must pursue some of the Words of it ; as if a Man is indicted for forging a Will, by which a Lease for Years is conveyed ; this is not within the Statute under the Word *Will*, because it doth not charge

charge the Freehold, or disturb the Right thereof; and the Word *Will*, in the Statute, relates only to such Wills which convey a Freehold; but it comes under the Words *Writing sealed*, and therefore shall be punished by that Law.

Four Years after the Making of this Statute, one *Taverner* was indicted for forging a Customary of a Manor, in which he had inserted several false Customs, and had put the Hands and Seals of eleven Tenants to it; and it was proved he did it wittingly, subtilly and falsly; and this was held Forgery within the Statute. *Dyer* 322. B.

In the next Paragraph, there are other Offences mention'd.

Forging.	{	1. Lease for Years.	} Of Lands not Copyhold. 1 <i>Lut.</i> 190. Action on this Statute for double Costs.
		2. Annuity.	
		3. Obligation.	
		4. Bill.	
		5. Acquittance.	} <i>Sid.</i> 278. fined 100 <i>l.</i> and bound to Good Beha- viour.
		6. Release, or other Discharge of a Personal Thing.	

And there is some Variation in the Punishment of these Offences, *viz.* *Pillory*; but the Offender loses but one of his Ears, and is to suffer but a Year's Imprisonment without Bail.

The second Offence in all the Cases above-mentioned, is Felony; but this seldom or never happens.

3 *Leon.* 170.

Now Forging a Deed, by which *Goods* and *Chattels* are conveyed, is within neither of these Paragraphs: First, because it doth not concern a *Freehold*; and it is neither a Bill, Bond, Acquittance or Discharge of a Personal Thing, and so not within the Words of the Statute.

King and
Knight,
3 *Salk.* 375.

Information against the Defendant for falsly *Endorsing* 20 *Exchequer* Bills; the Defendant was found guilty, but the Judgment was set aside, because the Word *Endorse* is not sufficient; for that imports a Writing on the Back of the Thing without putting a Name to it; therefore it should have been that the Defendant put such a Person's Name on the Back of the Bills, *ubi revera* (where in Truth) there was no such Person, or not order'd to put his Name. 'Tis true, the Information is *falso indorsavit in Deceptionem Regis* (falsly indorsed in Deceit of the King), and it is so found by the Jury; but a Fact shall not be made criminal by an adverb of Aggravation, it should have been, That the Defendant made a false Endorsement *continen'*, &c. (containing, and so forth), for tho' here is a Falsity, yet nothing is charged which is criminal.

The Father bound his Son Apprentice, and gave Bond of 100 l. for his Good Behaviour; the Master razed out *Libris* (Pounds), and put in *Marcis* (Marks); and this was held not within the Statute, because he did a Prejudice to none but himself; that is, by making the Bond void, or at least by putting in a lesser Sum for a greater; but if he had increased the Sum, it had been otherwise.

Forging an *Assignment* of a Lease is not within the Statute, because it doth not charge the Lands, but only transfers an Interest which was in Being before.

But making a Feoffment, tho' Livery and Seisin was not endorsed when the Deed was delivered, and afterwards selling the Land for a valuable Consideration to another, and the endorsing Livery on the first Deed; this was held Forgery both in the Feoffor and Feoffee, because it was to deceive an honest mesne Purchaser.

The Testator appointed a Man to write his Will, and to insert such a Clause, which he omitted; this is not Forgery; so if he write a Will without any Direction, and bring it to the Testator, who is not of perfect Memory, and he signs it: But if the Devisor directs a Gift to one for Life, Remainder to another in Fee, and the Writer omits the Estate for Life, so that the Remainder vests immediately upon the Death of the Devisor; this is Forgery.

Indictment, for that the Defendant *fabricavit seu fabricari causavit* (forged or caused to be forged) a Bill of Lading: This was held naught upon a Demurrer, because an Indictment ought to be certain and positive.

Indictment for forging *quoddam scriptum obligatorium* (a certain Writing obligatory); it was objected that it could not be obligatory if forged; therefore it should be *quoddam scriptum* (a certain Writing), purporting a Writing obligatory; but this Objection was not allowed.

Sessions have no Authority to take an Indictment for Forgery, for the Justices have no Power, but what they have by Act of Parliament; and the general Words of their Commission, *De omnibus aliis Malefactis & Transgressionibus quibuscunque* (of all other Misdeeds and Offences whatsoever) must be understood of such Crimes as they have Power over by the several Statutes which created or enlarged their Jurisdiction.

Mich. 9 Annæ, B. R. Salk. 406.

By 9 G. 2. the Act of 2 G. 2. against Forgery, &c. is revived and made perpetual.

One *Obrian*, an Attorney, was indicted for publishing a forged and counterfeit Affidavit, purporting to have been sworn before Mr. *Dengueir* a Justice of Peace; setting forth, That one *E.* was married to an Ensign in the *West Indies*, and that she was then a Widow; and the Indictment says, that the Defendant published this forged Affidavit, well

Blake and Allen. Moor 619. Salk. 375. S. P.

Moor 655. Salway and Wale.

Noy 13. Moor 760. Combe's Case.

knowing at the Time it was a forged Affidavit ; then it goes on and says, that he published a forged Certificate, that the Person mentioned in the Affidavit to be married to the Ensign, and then a Widow, was then alive, and that this Certificate was supposed to be signed by the Parson of the Parish and two Church-wardens ; the Indictment goes on and charges that one *Burroughs*, by Means of these forged Things, (*viz.* the Affidavit and Certificate) procured a Sum of Money laid in the Indictment to be paid to him as her Attorney, as a Pension to an Officer's Widow by the Treasurer of the Crown : These Facts being found upon the Trial, it was moved in Arrest of Judgment, that this being an Indictment at Common Law, these were not Offences indictable. By *Lee*, Chief Justice and the Court, That it did not seem material whether the Facts charged would amount to Forgery at Common Law ; but the true Question is, Whether the Facts charged here were Offences punishable at Common Law. 'Tis said in *King* and *Newnham*, that a bare false Affirmation does not amount to a false Note, for that People ought to take more Care than barely to trust verbal Affirmation. But it never was determined, nor possibly can be, that where a Fraud is charged in an Indictment coupled with such Circumstances, that 'tis morally impossible for any one to defend himself from the Danger of falling into the Snare, that such an Offence should not be indictable at Common Law. The Offence laid here is publishing a forged Affidavit, a forged Certificate, and by Means thereof, knowing they were forged, another Person has procured the Payment of a Sum of Money mentioned in the Indictment. It has been objected as contrary to Law to indict a Man merely for the Publication of any Thing forged without some Principal's being found guilty of the Forgery. If a Man has a forged Writing in his Custody, and he will publish it knowing it to be forged, surely 'tis highly punishable ; if he did not know it to be forged, and lets it go out of his Hands, 'tis no Forgery in him, nor is it indictable. 'Tis charged that by Means of these false and forged Things *Burroughs* received the Money : It is a higher Offence than the Publication of a Libel, which every Day's Experience proves to be indictable as an Offence ; if *Burroughs* had any other Authority to receive that Money he should have made use of it in his Defence upon the Trial ; what was contained in the Indictment is found by the Verdict, and if there's enough to make it an Offence, 'tis sufficient. 'Tis objected, that they have laid them as Affidavits, and if it was forged it was a mere Nullity, and no Affidavit ; 'tis true it would be null as Affidavit, but this is only laid as a Description of the Fact, and making one of the Circumstances, and seems an extreme clear Case without entring into the Matter

Matter of Forgery; tho' even that seems clear, that forging such Writings is an Offence indictable as Forgery at Common Law; and in the Case of *King and Ward, Hill. 13 Geo. 1.* which was an Indictment for forging an Indorsment to intitle himself to a Quantity of *Allom*, with an Intent to defraud the King; and another Count charging him with Publication, knowing it to be forged, it was objected that this was a false Note or Token, and not an Offence at Common Law. But by Lord *Raymond* and the whole Court, it was a Writing for which the Party was indictable for Forgery at Common Law; it being of that Nature, that the Party to whom it was tender'd might receive Prejudice thereby; tho' where it appears it could have been no Prejudice to any Body, it was not indictable at Common Law. Said that the Statute — *Hen. 8.* had made no new Offence, only added a fresh Punishment, as Pillory, or any Thing except the Pain of Death. *Mich. 14 Geo. 2. King and Obrian.*

See Counterfeiting and Forging, Title Felony. See also Title Perjury.

An Indictment for Forging a Deed.

Suffex, to **T**HE Jurors, &c. That R. H. late of H. &c. wit, on the twelfth Day of May in the ninth Year of the Reign, &c. at H. aforesaid in the said County, upon his own Head and Imagination, and by false Conspiracy, did wittingly, subtilly and falsely forge and make a certain false Deed, that is to say, a certain Indenture, whereby one R. B. did bargain and sell all his Lands, called, &c. with the Appurtenances in H. in the said County to one T. B. and did then and there publish and cause the said Indenture to be read and shewed forth in Evidence, to the Intent to molest and trouble the Estate, Possession, Title and Interest of the said R. B. in the Lands and Tenements aforesaid, whereby the said R. B. is greatly troubled and molested in his Possession, Title and Interest to the Lands and Tenements aforesaid with the Appurtenances, in Contempt of our said Sovereign Lord the now King, to the Grievance and Damage of him the said R. B. and against the Form of the Statute in such Case made and provided, and also against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

If the Information and the forged Lease vary in the Name of the Lands, 'tis void; but 'tis material to alledge some Parcel of Land, which may certainly be proved; and as to that, you may say, amongst others, *Hob. 272.*

An Indictment for Forging a Bond.

Suffex, to **T**HE Jurors, &c. (as before to) a certain false
 wit, Obligation, whereby one W. B. of, &c. on
 the Day and Year above-mentioned, did bind himself (to the
 Defendant) in the Sum of One hundred Pounds to be paid (to the
 said Defendant) at a certain Time in the said false Obligation
 limited, and afterwards, that is to say, on the twentieth Day
 of May in the ninth Year of the Reign, &c. at H. aforesaid
 in the said County, did publish and give in Evidence the said
 false Obligation so wittingly and subtilly forged, as the true
 Obligation of him the said W. B. knowing the same to be false
 and forged, to the Intent to have and recover of the said W. B.
 the aforesaid One hundred Pounds, to the great Damage of him
 the said W. B. and against the Form of the Statute in such
 Case made and provided, and also against the Peace of our said
 Sovereign Lord the now King, his Crown and Dignity.

Forestallers, Regrators and Engrossers.

Vide Ordinance for Bakers, c. 10.

3 Inst. 195,
196.

A Forestaller is called by my Lord Coke, *Pauperum Depressor & totius Communitatis & Patriæ publicus inimicus* (a Depressor of the Poor, and a publick Enemy of the whole Community and to his Country), and therefore is punishable at Common Law.

5 & 6 Ed. 6.
c. 14.

By the Statute of 5 & 6 Ed. 6. he is thus described, viz.

Roll. Rep.
1 Part 422.

1. He who buys or contracts for any Merchandize, Victual, or any other Thing whatsoever, * *in the Way*, before it shall be brought to Market, &c.
2. He who causeth the same to be bought.
3. He who dissuades People from bringing such Commodities to Market, &c.
4. He who persuades them to advance the Price after brought thither: In either of these Cases he is a Forestaller.

A Re:

A Regrator is he who buys Butter, Calves, Candles, Capons, Cheese, Chickens, Conies, Fish, Grain, Geese, Hens, Lambs, Pigeons, Pigs, Sheep, Swine, Tallow, or other dead or alive Victuals brought to Market to be sold, and selleth the same again in the same Market, or in any other within four Miles thereof.

Regrator what.
13 Eliz. c. 25.
5 Eliz. c. 12.
5 Ed. 6. c. 14.

He who gets into his Possession by Buying or Contract, (unless by Grant of Land or Tithes) Corn on the Ground, or other dead Victuals, to the Intent to *sell them again*, except Buyers of Barley or Oats, to make Malt and Oatmeal.

But Victuallers not forestalling, and Badgers and Drovers not abusing their Licenses, and Buyers of foreign Commodities, not being Salt or Fish, are excepted.

An Engrosser being thus defined by the Statute, viz. One who gets into his Possession, Corn, &c. to the Intent to sell the same again; the Question was, If a Man buy Meal and convert it into Starch, whether this was within the Statute, because it doth not remain the *same*, but is altered by a Trade? And held not: But if he buys Corn, and converts it into Meal, and sells it, this is punishable by the Statute; because the converting it into Meal is not Alteration of the Corn, for it remains the same Corn still.

My Lord Coke says, That he rarely met with this Word before this Statute, and agrees, That 'tis an Offence only by the Consequence; and therefore an Indictment ought to set forth, That the Things bought were sold again in the same Market, and thereby made dearer.

3 Inst. 195.

Fishmongers and Butchers are not within this Law, if they buy only Things belonging to their respective Trades; but if they buy *ea intentione ad revendend. contra formam Statuti* (with Intention to sell again against the Form of the Statute), it is punishable. *Cro. Car. 315. Pen's Case. 1 Rol. Rep. 11.*

But the Indictment must be certain, and therefore it hath been held not good for engrossing *magnam quantitatem Straminis & Fæni*, or *diversos cumulos tritici* (a great Quantity of Straw and Hay, or divers Bushels of Wheat, &c.) for it should be alledged, how many Loads of Hay and Straw, and how many Bushels of Wheat, &c. *Cro. Car. 381. Rol. Rep. 134.*

But Apples, Plums and Hops are not.

2 Cro 214.
Braddon and
Bowes.

There are other Tradesmen, as well as *Fishmongers* and *Butchers*, which are not within this Statute; as *Poulterers* buying any Thing concerning their Trade, and selling it by Retail at reasonable Prices; and Innholders and Victuallers buying Wine, or any Thing for the Sustenance of Men, and selling it in their Houses.

And it is to be observed, that none of these Offences were punishable before this Statute; and now the Prosecution must be within two Years after the Offence; and by the express

Words in the Act, Justices in Sessions have Power to determine the same.

Punishment.

Upon Conviction at the Quarter-Sessions, either by the Oath of two Witnesses, or Presentment by the Jury, the Offender loseth,

1. For the first Offence, the Goods so bought, and must be committed for two Months without Bail.

2. For the second Offence, double the Value of the Goods, &c. and must be committed for six Months.

Which see in
Indictments.

3. For the third Offence, loseth all his Goods, must stand in the Pillory, and be committed during the Pleasure of the King; but the Prosecution must be within two Years after the Offence: One Moiety of the Forfeiture goes to the King, and the other Moiety may be levied by a *Fieri facias* or *Capias* by the Justices, to the Use of the Prosecutor.

An Indictment for Forestalling.

Suffex, to **T**HE Jurors, &c. That whereas one T. P. ^{avit,} of H. in the said County, Yeoman, was possessed of twenty Swine, as of his proper Goods and Chattels, and being so possessed, one J. O. of H. aforesaid in the said County, Yeoman, on the fourth Day of February in the ninth Year of the Reign, &c. at H. in the said County, and on divers other Days did meet the said T. P. * coming toward the Market of L. in the County aforesaid with the said twenty Swine, to sell the same there, and that he the said J. O. did then and there forestall and buy out of the Market the said twenty Swine coming toward the said Market, whereby the said T. P. did not bring the said Swine to the Market aforesaid, in Contempt of our said Sovereign Lord the now King, and against the Form of the Statute in such Case made and provided, and also against the Peace of our said Lord the King, his Crown and Dignity.

* If these
Words should
be left out, 'tis
ill. 1 Roll.
Rep. 421.

An Indictment against Regrators.

Suffex, to **T**HE Jurors, &c. That J. O. of H. in the ^{avit,} said County, Yeoman, on the fourth Day of February in the ninth Year, &c. at L. in the said County, did buy, regrate, obtain, and get into his Hands and Possession in a certain Market then and there holden, fifty Lambs for ten Pounds of good and lawful Money, of one E. D. who had then brought the said fifty Lambs to the said Market to be sold, and that immediately

mediately afterwards, that is to say, on the said fourth Day of February in the same Year above-mentioned, the said J. O. did unlawfully sell the same again in the said Market to one T. S. for twelve Pounds of like good and lawful Money, contrary to the Form of the Statute in such Case made and provided, and also against the Peace of our said Lord the King, his Crown and Dignity.

An Indictment against Ingrossers.

Suffex, to **T**HE Jurors, &c. That J. H. of H. in the said County, Yeoman, on the fourth Day of February in the ninth Year, &c. at B. and K. in the said County did ingross and buy of J. A. and R. G. and other Subjects of our said Lord the King One hundred Quarters of Wheat of the Price of Two hundred Pounds, and did board and keep the said One hundred Quarters of Wheat in his House, to the Intent to sell the same again at his Pleasure, by which Means Wheat was much more scarce and dearer in the Markets and Towns in the said County, to the great Damage of the Subjects of our said Lord the King, and contrary to the Form of the Statute in such Case made and provided, and also against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Fuel and Billets.

THE Act of 9 A. c. 15. was made to render more effectual 43 Eliz. concerning the Assize of Fuel, and therefore enacts, where Billets are exposed to Sale, and not assized and marked, or cut according to the Directions *infra*, any Justice upon Information may call before him six good Men of the Town, Parish, &c. where the same is so exposed, and swear them to inquire, whether such Billets are of sufficient Assize, &c. And if not truly assized and mark'd, may order them to be distributed to the Poor of the Parish, &c.

And all Billets of what Scantling or Denomination soever, shall contain in Length three Foot and four Inches, and be of the Dimensions following, *viz.*

Names of Billets.	Being round.		Half round.		Quarter cleft.		How to be cut or marked.
	In.	qr.	In.	qr.	In.	qr.	
A single	72	1	0	0	0	0	No Notch.
A Cast	10	2	12	1	12	0	One Notch.
A Trois	13	0	15	0	14	3	Three in the Middle
2 Cast	15	0	17	1	17	0	Two Notches.
3 Cast	18	1	21	1	21	0	{ One at each End, and one in the Middle.
4 Cast	21	1	24	2	24	0	
5 Cast	23	3	27	2	27	0	Four
6 Cast	26	0	30	0	29	2	Five
7 Cast	28	0	32	2	32	0	Six
8 Cast	30	0	34	3	34	0	Seven
9 Cast	31	3	36	3	36	0	Eight
10 Cast	33	2	38	3	38	0	Nine
11 Cast	35	1	0	0	0	0	Ten
12 Cast	36	3	0	0	0	0	Eleven
13 Cast	38	1	0	0	0	0	Twelve
14 Cast	39	3	0	0	0	0	Thirteen
15 Cast	41	0	0	0	0	0	Fourteen
16 Cast	42	2	0	0	0	0	Fifteen
17 Cast	43	3	0	0	0	0	Sixteen
18 Cast	45	0	0	0	0	0	Seventeen
19 Cast	46	1	0	0	0	0	Eighteen
20 Cast	47	2	0	0	0	0	Nineteen
							Twenty

Every Billet commonly called,

Notches

Every Billet commonly called,

Notches

But this Act extends not to Owners or Proprietors of Trees, who make Billets for their own private Use only.

9 A. c. 15.

Upon Information given to a Justice of Peace, Mayor, &c. that Billet is not thus marked, he may call before him six sufficient Men of the Place where the Billet is, and give them an Oath to inquire and present, whether all or any Part of the Billet is of good Assize; and if they present on their Oath that 'tis not, then the Justice, &c. may take it as forfeited, and deliver it to the Overseers of the Poor of the Parish, to be distributed according to their Discretions.

If an Action is brought against the Justice, &c. he may plead the General Issue, and give the Act and Special Matter in Evidence; and if he recover shall have treble Costs.

By 10 A. c. 6. the Laws for Assize of Fuel are not to extend to Billets made of Beech-wood: And no Person to sell Billets of Beech-wood by Retail in London, Westminster, or Bills of Mortality, unless assized, cut or marked, according

to the Usage of marking Beech-Billet, before the Act of 9 *Annæ*, or by Weight of the said Billet, if the Buyers require it.

Fullers Earth.

AFTER the 24th Day of *June* 1698. it shall not be exported; Penalty 1 *s.* for every Pound Weight. 9 & 10 *Will.*

Game.

AFTER Property was settled by the several Civil Laws of different Countries, and *Meum* and *Tuum* establish'd in most Things, some were still left in the State of Nature, and were so far common to all Mankind, that no one could claim an exclusive Right to them, unless whilst they were literally in his own Possession: Amongst these were what the Civilians call *Fera Naturæ*, under which Denomination all Game whatsoever is included. Originally therefore every one had a Right to kill and take to his own Use any Beast or Bird that was in its natural Liberty; and that was neither tame by Nature, as your Domestick Beasts or Fowls, or so far reclaimed or made tame, as to have lost the Desire of returning back to its native Waste: But the Passion that great Men had for Hunting, and the Sports of the Field, soon curbed this Right under a specious Pretence, that whilst the ordinary People were too intent upon their Pursuits after Game, their Labour and more useful Employments were neglected. If we look into Antiquity we shall find what Misery this Nation has suffered by its Monarchs unbounded Thirst after this Diversion; and the Civil Wars that were the Price of the *Charta de Foresta*, one of the Boundaries of the *English* Liberty, perhaps owed their Source to that more than any other Grievance whatsoever. The ill Blood that the severe Execution of the Game Laws now breeds, would almost make one wish that the whole Species of Game was extinct; at least it would be worth the while of the Gentlemen, who as Justices of the Peace have the Execution of these Laws in their Hands, to consider that as all these Acts are restrictive to natural Liberty, they are never to be stretch'd against the Offenders, but are always to be interpreted

What shall be
said to be
Game.

puted in the most favourable Manner in their Behalf; and that if it can be avoided, the Death of a Hare or Partridge is not so great a Crime as to be expiated by the Ruin of a poor Wretch and his Family.

To understand the Laws relating to Game, it is necessary to be known what Species amongst the *Fera Naturæ* are included in this Word. 13 Ric. 3. c. 13. Enumerates, three kinds, *Deers, Hares, or Conies*, or other Gentlemens Game. Sometimes the Place where they are taken is a necessary Incident to make it an Offence.

As by 11 Hen. 7. c. 17. Taking Pheasants, Partridges, by Nets, Snares, or other Engine out of his Warren upon another's Freehold, and without his Licence, incurs 10*l.* Penalty. Taking Falcons, Goshawks, Laners or Swans Eggs, Fine and Imprisonment. Justices of Peace to determine such Matters.

By 19 Hen. 7. c. 11. Killing Deer or Herons, except upon his own Ground, &c. Sometimes the Manner and Time of Killing make the Offence; as by 14 & 15 Hen. 8. c. 10. No Person shall trace and kill any Hare in the Snow, 6*s.* 8*d.* Penalty; the Justices at every Sessions to inquire of such Offenders, and to assess the Forfeiture.

So by 25 Hen. 8. c. 11. Taking Wild-fowl between the last of May and last of August, with Nets or other Engines, is made penal, a Year's Imprisonment, and 4*d.* for every Fowl. So Taking or Destroying Wild-fowls Eggs, from the first of March to the last of June,

For every Egg of	{	Crane or Bustard — — —	20 <i>d.</i>
		Bittern, Heron, or Shovelard	8 <i>d.</i>
		Mallard, Teal, or other	} 1 <i>d.</i>
		Wild-fowl — — —	

This Act not to extend to Fowl, Wild-fowl, or Eggs not used to be eat. Justices of Peace to inquire, hear and determine of these Offences, as in Case of Trespass.

By 23 Eliz. c. 10. Taking or Destroying any Pheasants or Partridges with Nets, Snares, Gins, Engines, Rowfing, Lowing or other Devices in the Night, forfeits 20*s.* for each Pheasant, 10*s.* for each Partridge; for want of Payment within ten Days after Conviction, a Month's Imprisonment, and put in Bond with Sureties for two Years. Forty Shillings Penalty for Hunting or Hawking in standing Corn. Justice of Peace may inquire and bind over to the Sessions, who shall hear and determine, &c.

1 Jac. 1. c. 27. §. 2. Every Person that shall shoot at, kill, or destroy, with any Gun, Cross-Bow, Stone-Bow, or Long-Bow, any Pheasant, Partridge, Pigeon, Heron, Mallard, Duck, Teal, Widgeon, Grouse, Heathcock, Moor-game,

or

or any such Fowl, or any Hare, or shall take or destroy any Pheasant, Partridge, Pigeon, with Setting-Dogs or Nets, or with any Manner of Nets, Snares or Instruments; or takes Pheasants, Partridges, or Swans Eggs out of the Nest, or breaks or destroys them in it; or traces or courses Hares in the Snow, or destroys them with Hare-Pipes, Cords or other Engines; the Offence proved by Confession or two Witnesses before two Justices of the Peace of the County, shall be committed for three Months to Gaol, unless he pays upon Conviction to the Churchwardens of the Parish where the Offence was committed, or the Party apprehended 20 s. for every such Fowl, Egg or Hare, or after the Month's Commitment shall be bound with two Sureties in a Recognizance of 20 l.

7 *Jac. 1. c. 11. §. 2.* Person Hawking at or destroying Pheasants or Partridges with Hawks or Dogs, by Colour of Hawking, between the first of *July* and last of *August*, forfeits 40 s. for every Hawking, and 20 s. for every Pheasant and Partridge; for Default of Payment Commitment to Gaol for a Month.

§. 8. Taking, killing, destroying, Pheasant, Partridge with Setting-Dogs and Nets, or with any Nets, Snares or Engines, Forfeiture 20 s. for each Partridge or Pheasant; for Default of Payment Commitment for three Months, and be bound in a Recognizance of 20 l.

As to 22 *Car. 2. c. 25.* as to Conies, *vide* Conies.

And if any by Hays, Tunnels, or other Nets, &c. drive or take any Wild-duck, Teal, Widgeon, or other Fowl, commonly reputed Water-fowl, in any of the Fens, Lakes, broad Waters, or other Places of Resort for Wild-fowl in the Moulting Season; and be thereof convicted before one Justice by one Witness, he forfeits for every such Fowl 5 s. one Half to the Informer, and the other to the Poor, to be levied by Distress and Sale, by Warrant of the Justice before whom convicted, rendring the Overplus above the Penalty and Charges of Distress; and for Want of Distress, be committed to the House of Correction not exceeding one Month, nor less than fourteen Days, to be whipt and kept to hard Labour: And the Justice is to cause such Hays, Nets, &c. to be seised and destroy'd in his Presence.

9 *Ann. c. 25.*
§. 4.

By 10 *Geo. 2. c. 32. §. 10.* If any Person between the first of *June* and the first of *October* drives or takes by Hayes, Tunnels, or other Nets, Wild-Duck, Teal, Widgeon, or other Water-fowl in any Marshes or other Places of Resort for Wild fowl, and is convicted as by 9 *Ann.* he shall be liable to the Penalties of the Act.

Person not qualified killing Hare, Partridge, Pheasant, Moor, Heath Game or Grouse, forfeits 5 l. by 9 *Ann. c. 25.*
5 *Ann. c. 14.*

And

4 & 5 W. &c
M. c. 23. f. 11.
5 Ann. c. 14.
f. 5.

And because the Burning of Heath, Ling and Brakes or Fern, in the Forest of *Sherwood* in the County of *Nottingham*, doth destroy the Game; therefore if any Person shall burn the said Heath to Ashes, in that Forest, or in any other waste Ground, Common or Land, within that County, without Leave from the Owner of the Soil, shall forfeit to such Owner 10 s. And any Person buying such Fern-Ashes of any unlicensed Person, forfeits 10 s. for every Peck; one Moiety to the Poor of the Parish where the Offence shall be committed, and the other to the Informer.

The Conviction is to be before a Justice of the Peace, by the Oath of one Witness, and the Penalty is to be paid immediately; and in Default thereof, the Party is to be committed to the House of Correction for one Month.

The Laws having thus distinguished what is Game, and made the Destroying thereof penal, every Body would be equally included under such Penalty by the Commission of any of the Facts specified, if there were not Exceptions of particular Persons in the Acts themselves, who are at Liberty to hunt and kill Game; these the Law calls Qualified, and of these there are two Sorts; either those that are qualified in their own Right, or those that only act under a License or Deputation given them by another; the latter of these has a limited Authority, and if the Person so authorised transgresses his Bounds, the Law no longer looks on him as qualified. All besides, that are guilty of any Offences against the Game Laws, may be divided into two Sorts of Offenders; those that are actually concern'd in, or keep Engines for destroying the Game, or those that encourage such Destroyers of the Game by buying it of them or disposing of it for them.

Qualification.

The Acts giving a personal Qualification are 13 R. 2. c. 13. 1 Jac. 1. c. 27. §. 3. 7 Jac. 1. c. 11. §. 7. which now as to this Point seem repealed by 22 & 23 Car. 2. c. 25. §. 3. which enacts, that every Person not having Lands or Tenements or some other Estate of Inheritance in his own or his Wife's Right of the yearly Value of 100 l. or for Term of Life, or having Leases for 99 Years, or any longer Term, of the clear yearly Value of 150 l. (other than the Son and Heir apparent of an Esquire or other Person of higher Degree, and the Owners or Keepers of Forests, Parks, Chases or Warrens) are not allow'd to have Guns, Bows, Greyhounds, Setting-Dogs, Ferrets, Coney-Dogs, Lurchers, Hayes, Nets, Low-bells, Hare-Pipes, Gins, Snares, or other Engines aforesaid, but shall be prohibited to keep or use the same. Appeal lies to Quarter-Sessions upon any Proceeding on this Act; their Order to be final.

But there are some Offences by the Game Laws, that even a Person qualified may be guilty of, and liable to the Penalties inflicted

inflicted on the Offenders; as upon 9 *Ann. c. 25. §. 3.* if any Person shall take, kill, or destroy, any Hare, Pheasant, Partridge, Moor, Heath-Game or Grouse, in the Night-time, he shall incur the Penalties inflicted by 5 *Ann. c. 14.* upon Higlers, &c. And *Quære*, whether tracking Hares in the Snow is not one of them, and likewise the Offences by 9 *Ann. c. 25. §. 4. ante*, and 10 *Geo. 2. c. 32. §. 10.* and 22 & 23 *Car. 2. c. 25. §. 6.* setting Snares, &c.

Persons thus qualified to kill Game in their own Right, may shoot, hunt and kill Game, and take it to their own Use, upon their own Land, or any Body's else, and are liable to no Prosecution upon any of these Acts; but the Person whose Ground they come upon, has his Action of Trespass for breaking his Close, but no other Remedy; and has no Right to the Game tho' kill'd upon his Land.

Next we come to those who are not qualified in their own Right, but have a Deputation from another.

By 22 & 23 *Car. 2. c. 25. §. 2.* Lords of Manors or other Royalties not under the Degree of an Esquire may by Writing under their Hands and Seals authorize Game-keepers within their Royalties, who may seize all such Guns, Bows, Greyhounds, Setting-Dogs, Lurchers or other Dogs to kill Hares or Conies, Ferrets, Trammels, Low-bells, Hayes, or other Nets, Hare pipes, Snares or other Engines for the Taking and Killing of Conies, Hares, Pheasants, Partridges, or other Game, as shall be used within the Manors, and by Persons prohibited by this Act to keep the same; and the Game-keeper or other Person authorized by Warrant under Hand and Seal of a Justice of Peace, may search the Houses, &c. of Persons suspected to have in their Custody Guns, &c. and seize and keep them to the Use of the Lord of the Manor or destroy them.

By 4 & 5 *W. & M. c. 23.* If any inferior Tradesman, Apprentice, or other dissolute Person, hunts, hawks, fishes, or fowls, unless in Company of the Master of such Apprentitude duly qualified, such Person shall be subject to the Penalties of the Act.

By 9 *Ann. c. 25. §. 1.* No Lord or Lady of a Manor shall make above one Game-keeper within one Manor, with Power to kill Game; the Name of such Person is to be entered with the Clerk of the Peace, to be made and viewed without a Fee; a Certificate of it to be granted by the Clerk of the Peace upon Payment of a Shilling: And in Case any other Game-keeper, who shall not be otherwise qualified to kill Game, shall kill any Hare, Pheasant, Partridge, Moor, Heath Game or Grouse; or if any Game-keeper, or other Person not qualified in his own Right, shall sell or expose to Sale any Hare, &c. the Offender shall incur such Penalties as are inflicted by 5 *Ann. c. 14.* upon Higlers, &c.

for

for buying or selling of Game; such Forfeitures to be recovered as prescribed by the Act.

By 3 *Geo. 1. c. 11. §. 1.* No Lord or Lady of a Manor shall appoint any Person to be a Game-keeper, with Power to kill Game, unless such Person be qualified, or be truly a Servant to the said Lord or Lady; or immediately employ'd to kill the Game for the sole Use of such Lord or Lady; and no Lord, &c. shall authorize any Person not qualified to keep or use any Greyhound, Setting-Dog, Hays, Lurchers, Guns, Tunnels, or any other Engine, to kill the Game; and any Person not being qualified, or not being truly a Servant of any Lord, &c. or not immediately employ'd to take or kill the Game, for the sole Use of such Lord, who under Pretence of any Deputation, &c. shall take or kill any Game or use any Greyhounds, &c. being convicted thereof, shall for every Offence incur such Forfeitures, &c. as are appointed by 5 *Ann. c. 14.* and 9 *Ann. c. 25.*

As to the Acts, which punish the Offenders against the Game Acts, either those that actually kill or catch it, or keep Dogs or Engines to destroy it, or they that purchase it from such Destroyers; it will be best, as the Offences are blended sometimes in the same Act, to mention them together, under one general Head; several of the Acts having been already mentioned under the Description of what is Game, and the subsequent ones given greater Penalties, 'tis not necessary to mention them again.

4 & 5 *W. & M. c. 23. §. 2.* Gives Power to every Constable, &c. authorized by the Warrant of any Justice of Peace to enter and search the Houses of suspected Persons not qualified; and in Case any Hare, Partridge, Pheasant, Pigeon, Fish, Fowl, or other Game shall be found, the Offender shall be carried before some Justice of Peace; and if such Person does not give a good Account how he came by such Game, or in convenient Time, to be set by the Justice, does not produce the Party of whom he bought such Game, or other credible Person to depose on Oath such Sale thereof, he shall be convicted by the Justice of such Offence, and forfeit for every Hare, Partridge, Fish, or other Game, any Sum not under 5 *s.* nor exceeding 20 *s.* to be ascertained by the Justice; a Moiety to the Informer, the other Moiety to the Poor of the Parish where the Offence was committed, to be levied by Distress and Sale by the Justice's Warrant; for want of Distress Commitment to the House of Correction, Whipping and hard Labour for not more than a Month, or less than ten Days; and in case any Person not qualified shall keep or use any Bows, Greyhounds, Setting-Dogs, Ferrets, Coney-Dogs, Hayes, Lurchers, Nets, Tunnels, Low-bells, Hare-pipes, Snares or other Instruments for Destruction of Fish, Fowl, or other Game, and shall be convicted

victed thereof, the same Penalties shall be inflicted as on the Persons who are found to have any Hare, &c. And if any Person produced shall not before the Justice give Evidence of his Innocence as aforesaid, he shall be convicted in the same Manner as the Person first charged, and so from Person to Person till the first Offender be discovered.

No *Certiorari* on this Act, unless the Party prosecuting is bound in 50 *l.* &c. for Payment of Costs, &c.

5 *Ann. c. 14.* Enacts, that every

5 *Ann. c. 14.*

Alehouse-keeper,	Chapman,	Inn-keeper,
Carrier,	Higler,	Victualler,

having in his Custody, or who shall buy or sell, or offer to sell, after the first Day of *May* 1707.

Any

Grouse,	Heath-Game,	Partridge,
Hare,	Moor,	Pheasant,

forfeits for each the Sum of 5 *l.* one Half to the Informer, the other to the Poor of the Parish where the Offence was committed; and this is to be levied by Virtue of a Warrant under the Hand and Seal of the Justice of Peace, before whom the Offender shall be convicted; and for Want of Distress, the Offender must be committed to the House of Correction for three Months for the first Offence, without Bail, and four Months for the second Offence.

The Conviction is to be made before a Justice of Peace, either upon View, or upon Oath of one Witness; but it must be within three Months after the Offence done.

'Tis likewise enacted, That if any one who destroys the Game, and shall within three Months discover the Ale-house-keeper, &c. who hath bought or sold, or offered to buy or sell, or had in his Possession any of the said Game, so as the Person may be convicted thereof, such Discoverer shall be discharged of the Penalties, and be entitled to a Moiety of the Forfeiture. Sect. 3.

The like Conviction and like Punishment for any Person, not qualified, to keep Greyhounds, Hays, Lurchers, Setting-Dogs, Tunnels, or any other Engine whatsoever to kill the Game. And no *Certiorari* is to be allowed, unless the Party convicted shall be bound to the Prosecutor in the Sum of 50 *l.* with such Sureries as the Justice before whom he was convicted shall think fit; conditioned to pay the Prosecutor full Costs, to be ascertained upon Oath within fourteen Days after Conviction, or a *Procedendo* allowed. Sect. 4.

But

Sec. 2.

But a Carrier is not accountable for any Game sent up by a Person qualified to keep it.

Sec. 4.

'Tis further provided, That any Justice of Peace, or Lord of a Manor, (but within his Manor) may take away any Hare, or any other Game; or any Dog, Net, &c. from any Higler, Carrier, or any other Person not qualified to kill or keep the same.

Sec. 4.

And a Lord of a Manor may likewise (under his Hand and Seal) give Power to a Game-keeper to kill Game within his Lordship: But such Game-keeper must not sell any Game without the Consent of his Lord; if he doth, then upon Complaint of the said Lord, and upon the Oath of one Witness before a Justice of Peace, he shall be sent to the House of Correction for three Months.

9 A. c. 25.

And if any Hare, &c. be found in the Shop, House, or Possession of any not qualified in his own Right to kill Game, or intitled thereto under some Person so qualified, it shall be adjudged an Exposing to Sale within the said Act.

12 A. c. 12.

&c. 2. c. 1.

1 Geo. 1. c. 1.

3 Geo. 1. c. 2.

14 Geo. 2. c. 9.

f. 39.

And note; In several of the late Statutes for regulating the Forces, &c. is a Clause inserted, That if any Officer or Soldier shall without Leave of the Lord of the Manor, under Hand and Seal first obtained, take, kill or destroy any Hare, Coney, Pheasant, Partridge, Pigeon, or other Sort of Fowl, Poultry, or Fish, or the King's Game, and be thereof, on Complaint made, convicted by one Witness before one Justice (who may hear and determine this Matter) every Officer forfeits for every Offence 5 *l.* to be distributed among the Poor where the Offence was; and every Officer commanding in Chief upon the Place, for every such Offence by any Soldier under his Command, 20 *s.* to be paid, &c. as aforesaid: And if on such Conviction and Demand thereof by the Constable or Overseers, such Officer refuses or neglects, and shall not within two Days pay the same, he forfeits his Commission, and the same is thereby declared null and void.

8 Geo. 1. c. 19.
f. 1.

But the Conviction of those who destroy'd the Game, being to be made before the Justices of Peace, the Offenders often escaped the Punishment; and if they were convicted, the Penalty is so small, that when paid, it did not deter disorderly People from committing the like Offences; therefore by this Statute 'tis provided, That where any Person shall be liable to a *pecuniary Punishment* for any Offence against any Law in Being for the Preservation of the Game, any Person may either proceed before the Justices, or *may sue for the same by an Action of Debt, &c. in any Court of Record; and if he recovers, he shall have double Costs.*

This

This Action must be brought before the End of the *next Term after the Offence committed*; and if the Plaintiff chooses to proceed by Action of Debt, he shall not proceed for the same Offence before the Justices; but if he should, then the Person so doubly prosecuted, may plead the former Prosecution depending, or the Conviction or Judgment thereon had.

The Defendant was convicted upon the Statute 5 *Ann. c. 14.* for keeping a Greyhound, and killing four Hares, not being qualified; but it was by his own Confession, and not upon the Oath of one credible Witness, as that Statute directs. Now the Forfeiture of 5 *l.* relates to the Conviction; and if that is not according to the Statute, then nothing is forfeited; and the Justice of Peace having no Power in this Case, but what he derives from the Statute; therefore it ought to be pursued, especially where it is penal.

But adjudged, that the † Confession of the Offender is † See Tit. Per. within the Intention, tho' not within the Letter of the Act, jury. and 'tis the strongest Evidence against the Person confessing; therefore where a Justice convicts upon a stronger Evidence than is required by the Statute, such Conviction must be good. *Hill. 9 Geo. B. R. The King vers. Gage, 8 Mod. 63. S. C.*

Another was convicted for keeping Dogs, Nets, Ferrets, &c. to catch Conies, not being qualified; and by Virtue of a Warrant his Goods were distrained for the Forfeiture, and a Town-Clerk granted a Replevin to take them out of the Possession of the Constable; the Court would not set aside the Replevin, but made a Rule for the Town-Clerk to shew Cause why an Attachment should not go. *Mich. 9 Geo. 1. King against The Town-Clerk of Guildford, 8 Mod. 208.*

Debt *qui tam* by a common Informer, on 5 *Ann.* for 15 *l.* the Plaintiff declared on two several Counts, one for 10 *l.* for killing two Partridges, the other for 5 *l.* for keeping an Engine to destroy the Game, not being qualified, &c. *Virtute statutorum hujus Regni.* Upon *Nil debet* pleaded, the Plaintiff had a Verdict for five Pounds only. Moved that he might enter the Verdict on either of the Counts, because the Defendant intended to move in Arrest of Judgment; for tho' he might not be qualified by Statute to keep a Gun, yet if he is otherwise qualified by Law, he is not subject to this Penalty; and he may be so qualified by being Huntsman to a Nobleman, who in coming up to Parliament may kill a Deer in any of the King's Forests; and this he may do by the Forest-Law, which is Part of the Law of the Realm. For this Reason the Plaintiff was order'd to enter his Judgment. *Pasch. 10 Geo. 1. Shipton and Hopton, 8 Mod. 238.*

A Conviction upon 4 & 5 *Ann.* for the Preservation of the Game; two Exceptions: 1. The Charge sets forth that the Defendant not being a Person so and so qualified,

and enumerating distinctly the several Qualifications in 22 & 23 Car. 2. omitted a new Qualification allowed by this Act, *viz.* That he was not a Person authorized by a Lord or Lady of a Manor to kill Game for their Use. 2. That the Person was charged with so many 5 *l.* as he killed Hares in the same Day; whereas the Offence in the Statute was keeping Dogs, Engines, &c. and not killing Hares. *Curia:* Had it been laid generally thus, that he not being a Person qualified according to Law, &c. it had been enough; but the Qualifications being distinctly and severally mentioned, Omission of one is fatal. As to the second Point, the Court was of Opinion, that the Offence for which the Statute gave the Forfeiture, was the keeping Dogs and Engines, not killing the Hares. If a Man not qualified goes a hunting, and kills never so many Hares on the same Day, he would forfeit but one 5 *l.* for 'tis but one Offence: But if a Man keeps Dogs and goes a Hunting several Days and kills Hares, if it was thus laid, that he such a Day kept Dogs and killed, &c. and then again such a Day, by laying thus severally, the Offence is severed, and he shall forfeit 5 *l.* for each Offence. *Adjournat.* *Queen and Matthews, Trin. 10 Ann. 10 Mod. 26.*

Trespass for breaking and entring his House and taking away a Gun; the Defendant justified by Virtue of 22 & 23 Car. 2. c. 25. for preserving the Game, setting forth, That the Lords of Manors and other Royalties may depute Game-keepers, who by Virtue of such Deputation may seize Guns, &c. and by Warrant from a Justice of Peace may search the Houses, &c. of suspected Persons, &c. and seize them for the Use of the Lord of the Manor, &c. and so brings his Case within the Statute, and justifies the Seizing the Gun, &c. Held, there was no Occasion for setting forth all this Matter, because the Defendant acted under a Warrant from a Justice of Peace, and in such Case he might have pleaded the General Issue: But if he had acted as a Game-keeper only, and without such Warrant, then he must have pleaded specially. *Nels. A. 1073. 2 Lutw. 1502. Viner's A. Tit. Game, 2.*

The Defendant in his Justification set forth, That *J. W.* was seized in Fee of the Hundred of *B.* and had a Court-Leet there, and that he had a Warrant of a Justice of Peace to search, &c. the Reporter makes a *Quere*, if a Hundred with a Court-Leet is within the Words (Manors or other Royalties); for if not, then, as it seems, it ought to have been alledged, that the House of the Plaintiff was within the Manor of the Lord who deputed the Game-keeper to seize the Gun, because the Gun was seized to his Use; and that if it was within the same or any other Manor of the said Lord,

it was to no Purpose to mention the Manor or Court-Leet.
Bowkley and Williams, 2 Lutw. 1506.

Game-keeper takes away a Gun; he ought to have had a Warrant from a Justice of Peace, and an Authority from the Lord of the Manor is not sufficient. *Carpenter and Adams, Comb. 183.*

In some Places a Man may stand in one County and shoot into two or three; so that it must be where the Offence was committed, and that is where the Party stood when he shot, not where the Object was which he shot at. *King and Alsop, Show. 339.*

Conviction on 33 *Hen. 8.* for keeping a Gun; on Proof it appeared that he had not 100 *l.* a Year; the Record of the Conviction being removed into *King's Bench*, Exception taken, *viz.* That it was *non habuisset* 100 *l.* a Year, but does not say when; for it may be he had 100 *l.* a Year at the Time when he kept a Gun, but not when he was convicted. *Curia*: This is a Conviction before a Justice of the Peace, and therefore the Time when the Offence was committed should be certainly alledged, *viz.* That the Defendant *prædicto Die & Anno* had not 100 *l. per Ann.* for which Reason it was quash'd. 3 *Mod.* 280. *King and Silcot.* In *Queen and Cobbold, Mich. 12 Ann.* which was a Conviction for keeping a Greyhound not being qualified, upon 5 *Ann. c. 14.* the Objection was that the Conviction was upon the single Testimony of the Informer; and by the Court, 'tis a fatal Objection; for should the Informer be allowed to be a sufficient Evidence, it would induce profligate Persons to commit Perjury for the Sake of the Reward, more especially since they can't be convicted of it; and there is no Necessity here as in the Case of Hue and Cry; Neither can the Justice have Conscience of the Matter as a Jury may: A Plaintiff in Chancery can't be a Witness to prove Perjury in the Answer. So in Information for forging a Deed to revoke a Will, no Legatee can be Witness. So on Information on usurious Contract, when the Statute says a credible Witness, 'tis such a one as is allowed *per Legem.*

The Defendant was convicted by two Justices on 5 *Ann. 14.* and committed for want of Distress, the Commitment concludes *till delivered by due Course of Law*; this is void for the Time of this Imprisonment, being directed by the Act of Parliament, it ought to have been for that Space of Time, and not a general Conclusion; and upon this it was quash'd *Queen and Green, Pasch. 13 Ann.*

Conviction upon 5 *Ann. c. 14.* for keeping Greyhounds not being qualified. Exceptions; 1. The Words of the Information are *habuerunt, usi fuerunt & servaverunt, &c.* which shews that the Offence is joint, and yet the Justices have ordered the Offenders to pay several Sums of 5 *l.* each; which

Partridge and
Naylor, Cro. E.
480.
Noy 52, 62.
Dyer 177. B.

is wrong ; for if the Crime is aggregate, the Penalty of Consequence must be so too, since the Statute makes no Distribution of the Penalty. 2. The Distribution of the Penalty has not pursued the Words of the Act, nor the Construction of Law thereupon, viz. *Quæ quidem separat' summ' in toto se attingunt ad decem libras, 5 l. of which is adjudg'd to the Informer, and 5 l. to the Poor ; but no Warrant to make a rateable or proportionable Distribution.* Chief Just. The Distribution is not material, for 'tis not the Part of the Justice to distribute the Penalty; the Statute does that; though the Justices have done Wrong in the Distribution, yet the Conviction must be good, and the Court will take Care to levy the Penalty. The Case of *Partridge and Naylor* is exactly in Point, the Forfeiture is according to the Crime, and not the Number of the Persons ; there is but one 5 l. to be forfeited by the express Words of the Statute, the Offence being but one ; therefore the Justices have given a wrong Judgment, and the Conviction must be quash'd. *Trin. 1 Geo. 1.*

The Defendant was convicted by the Justices at Sessions on 5 Ann. c. 14. §. 4. That he unlawfully had and kept in his Custody a Gun, being an Instrument for the Destruction of the Game. Upon Motion to quash it, because that simply keeping a Gun was not within the Act. Lee, Ch. Just. 'Tis true a Gun is mentioned amongst other Things in 22 & 23 Car. 2. But in 5 Ann. the Word Gun is omitted amongst the Instruments mentioned for the Destruction of Game. Since therefore the Instrument, upon the Keeping of which this Conviction is grounded, is omitted ; and at the End of the Act these Words are used, or other Instrument for the Destruction of the Game, it must mean such as are originally and in themselves adapted for the Destruction of the Game. Lurchers and Greyhounds are expressly mentioned in the Act, so it need not be said they are kept for Destruction of the Game. Probyn, J. The Defendant confessing he kept this Gun for the Destruction of the Game, will carry the Conviction no farther than the Words of it extend, and no penal Law ought to be carried any farther than the Words of the Statute, inasmuch as every such Law is an Abridgment of a Man's natural Liberty, it must be proved that the Gun was kept for the actual Killing the Game ; and this can be done no other Way than by shewing he did attempt it, and frequently has intended so to do ; as by proving he run a Hare with his Greyhound, this would be sufficient to bring a Man within the Act. Strange, S. G. when the Court had quash'd the Conviction, informed them, at the Time of making this Act, Lord Macclesfield desired the Word Gun might be omitted, and not mentioned among the other Engines designed for the Destruction of the Game ; since great Inconveniences would ensue,

ensue, as no one could keep a Gun in his House for his Safety. *Irlin.* 11 *Geo.* 2. *King and Gardiner.*

In the Case of *King and Fowlin*, an Indictment was quash'd upon the Motion of Mr. *Dennyson*. It set forth that he had eight Nets and two Guns, with which he had destroy'd the Game. Two Exceptions. 1. It does not mention he was not qualified. 2. 'Tis not indictable, since it was no Offence at Common Law. 2 *Salk.* 460. *King and Whigg.* Where a new Penalty is given for a Matter which at Common Law was an indictable Offence, as for keeping Swine in a City, which is a Nuisance; then one may either indict, or bring the Action on the Statute for the Penalty; but where the Statute makes the Offence, that Remedy must be taken which the Statute gives. *Salk.* 45. Indictments will not lie where there was no Offence at Common Law, because the Statute which has made the Offence has made it punishable in another Manner. 1 *Show.* 398. Judgment for the Defendant.

A Warrant against one having a Hare in his Custody.

To the Constable and Headboroughs of the Hundred of *H.*
and to the Keeper of the House of Correction, &c.

Suffex to **W** Hereas T. P. of *H.* in the said County, Hig-
wit, *ler*, hath on the Day of the Date hereof been
duly convicted before me R. B. Esq; one of his Majesty's Ju-
stices of the Peace for the said County, upon the Oath of R. K.
of, &c. for that the said T. P. had on the third Day of August
last in his Custody at *H.* aforesaid, one Hare contrary to the
Statute in that Case made and provided; by Reason whereof,
he hath forfeited the Sum of 5 l. These are therefore to require
you to levy the said Sum of 5 l. by Distress and Sale of the
Goods of the said T. P. rendring to him the Overplus, if any
such happen to be, the Charge of Distraining being first deduct-
ed; and that you forthwith pay one Moiety thereof to the said
R. K. who first informed me of the said Offence, and the other
Moiety to the Poor of the Parish of *H.* aforesaid, where the
same was committed; and for Want of such Distress, that then
you carry the said T. P. to the House of Correction at *L.* and
deliver him to the Keeper thereof, together with this Precept;
who is hereby commanded to receive him into his Custody, and
to keep him in the House of Correction for the Space of three
Months next ensuing the Date hereof, without Bail or Main-
prise, this being his first Offence of this Nature. And hereof
fail not, &c. Given, &c.

The like Warrant, *mutatis mutandis*, for Buying, Selling or offering to Sale, an Hare, Partridge or Pheasant : Or for keeping or using any Greyhound, Setting-dog, Hay, Tunnel, &c. or other Engine, not being qualified by Law to keep it.

A Licence from a Lord of the Manor to a Game-keeper.

Suffex, to **I** R. B. Esq; Lord of the Manor of C. in the said County, do hereby give Licence, Power and Authority to R. K. who is truly and properly my Servant, to kill any Hare, Pheasant, Partridge, or any other Game in or upon my said Manor of C. aforesaid, for my Use. Witness my Hand and Seal the third Day of August in the Year 1709.

A Mittimus of a Game-keeper to the House of Correction, for disposing of the Game, &c.

Suffex, to **W** Hereas R. K. of, &c. being impowered under the Hand and Seal of R. B. Esq; Lord of the Manor of C. in the said County, to kill Game in his said Manor for his Use, did on the third Day of August last kill one Hare in the said Manor, and did on the next Day sell the same to T. P. of, &c. without the Consent or Knowledge of the said R. B. And whereas the said R. K. hath on the Day of the Date hereof, and upon the Complaint of the said R. B. been duly convicted before me of the said Offence, by the Oath of J. B. of, &c. These are therefore to require you to convey the said R. K. to the House of Correction at L. and to deliver him to the Keeper thereof; who is hereby required to receive him into his Custody, and safely to keep in the House of Correction for the Space of three Months next ensuing: And hereof fail not. Given under my Hand and Seal, &c.

A War-

A Warrant to levy 5 *l.* upon one for Killing a Hare, not qualified, but under the Pretence of being a Game-keeper.

To the Constable, &c.

Suffex, to wit, **W** Hereas T. K. of L. in the County aforesaid, Labourer, was on the Day of the Date hereof duly convicted before me R. B. Esq; one of his Majesty's Justices of the Peace for the said County, upon the Oath of R. R. of, &c. that he the said T. K. did on the 8th Day of this Instant August, at L. aforesaid, and within the Manor of the said R. B. kill * one Hare, not being qualified by the Law so to do, and not being truly employed by him to take or kill any Game for his sole Use and Benefit; by Reason whereof he the said T. K. hath forfeited 5 *l.* pursuant to the Statutes in that Case made and provided: These are therefore to require you forthwith to levy the said Sum of 5 *l.* on the Goods and Chattels of the said T. K. by † Distress and Sale thereof; and that you pay one Moiety thereof to R. R. who first informed me of the said Offence, and the other Moiety to the Overseers of the Poor of the Parish of L. where the said Offence was committed, for the Use of the Poor thereof. Given, &c.

3 Geo. c. 11.
One Justice,
and one Wit-
ness, Prosecu-
tion must be
within three
Months.

* Or keep a
Grayhound or
Setting dog, as
the Case is.

† If no Distress,
then to the
House of Cor-
rection for 3
Months.

In Convictions upon this Act a general Averment is not sufficient, that the Person was not qualified, but it must be averred that the Defendant had not the particular Qualifications mentioned in the Statute as to Degree, Estate, &c. 2 Raym. 1415.

Gaming.

THO', where only for Amusement and used moderately, an innocent Diversion; yet if carried to Excess, nothing more destructive to Society; and tho' curb'd by several Acts of Parliament, still a reigning Vice in this Nation, comes under the Jurisdiction of the Justices of the Peace by 33 Hen. 8. c. 9. §. 11. which enacts that no Person for Gain or Living shall keep any Common House, Alley, or Place for

Bowling,
Coiting,
Cloth,

Cayls,
Half-Bowl,
Tennis,

Dicing,
Tables,
Carding,

E e 4

or

or any other Game prohibited by any Statute heretofore made, or any unlawful new Game, upon Pain to forfeit for every Day 40 s.

Secl. 12.

The Person that uses such House and Plays, for each Time forfeits 6 s. 8 d.

Secl. 14.

Justices of Peace, &c. may enter into all Places where such Games shall be suspected to be used, and may imprison the Persons keeping them, and the Players there, till they first find Security, to the King's Use, no longer to use such House, Game or Place, and the others be bound to play no more in the said Places.

Secl. 16.

No Apprentice,	Husbandmen,	Servants of all Kinds,
Artificer,	Labourers,	Watermen,
Fishermen,	Mariners,	

are to play at Tables, Tennis, &c. out of *Christmas*, under Penalty of 20 s. and at *Christmas* they must play in their Masters Houses, or in their Presence.

No Person to play at Bowls out of his Garden or Orchard, in open Places, under the Penalty of 6 s. 8 d. Justice of Peace knowing any Person using unlawful Games, may commit such Offender to Ward till he is bound to the King not to use such unlawful Games.

Secl. 18.

Where the Forfeiture is in a Leet or Franchise, the Lord is to have Half, the Informer the other Half; but if the Forfeiture is out of a Leet, &c. the King is to have one Moiety, the Informer the other. Person having a 100 l. a Year may licence his Servants to play within the Precincts of their Houses, &c. This Statute is to be given in Charge at the Sessions, and proclaimed four Times a Year in the Market-place.

In 29 *Eliz.* several being taken at a Gaming-house in *Staffordshire*, by one Justice, were indicted thereof; and he that kept the House was fined 5 l. and every Player 20 s. and were committed till paid.

And in 3 *Keble* 510. one was convicted of keeping a Cockpit six Days; and *per Cur.* 'Tis an unlawful Game within the said Stat. and took their Measures of Fining from that at 40 s. *per Diem*, though the Judgment was at Common Law, and fined him 12 l.

See the Stat. 16 *Car.* 2. c. 7. against Cheats in Gaming.

9 Annæ, c. 14.
f. 1.

Personal Security given for Money won or lent at Play shall be void; and if 'tis in Lands, &c. it shall enure to the Person to whom the same shall come after the Death of the Mortgagor, and all Conveyances made to prevent it from coming to him, shall be fraudulent and void.

Secl. 2.

He who loses by Gaming at one Time 100 l. and pays it to the Winner, may within three Months afterwards recover it

it of him by Action of Debt, for so much Money received to his Use; and if the Loser shall not sue for it in that Time, any other Person may, and shall recover treble the Value with Costs; one Moiety to the Plaintiff, the other to the Poor of the Parish.

Getting Money at Play by Cheating or ill Practice, or at any Time winning more than 10 *l.* and being convicted upon an Indictment or Information, shall forfeit five Times the Value of the Sum, or Thing won, to be recovered by the Prosecutor in an Action of Debt, and shall be punished as if perjured. Sect. 5.

Two or more Justices may cause to come before them any Person whom they have Reason to suspect to have no visible Estate, Possession or Calling to maintain himself, but doth for the most part support himself by Gaming; and if such Person cannot make it appear that the principal Part of his Expences is not maintained by Gaming, the Justices, &c. may require him to find Sureties for his Good Behaviour for twelve Months; and if he cannot, may send him to the common Gaol till he can. Sect. 6.

And if he do give Security for his Good Behaviour, and afterwards play for more than 20 *l.* at one Sitting, 'tis a Breach thereof, and a Forfeiture of his Recognizance. Sect. 7.

In Case any Person shall assault, beat, challenge, or provoke to fight, any other Person on Account of Money won by Gaming or Betting, being convicted on Information or Indictment, he forfeits all his Goods, and shall be imprisoned two Years. Sect. 8.

Two play'd at Back-Gammon, one of them stirred a Table-Man, but did not move it from the Point; and a Question arising between them, Whether he was bound to play that Man, a Wager of 100 *l.* was laid, and referred to the Groom Porter to decide; and in an Action brought for the 100 *l.* the Question was, Whether this was within the Statute of Gaming; and adjudged that it was not, because it was a Wager, not on the Chance, but on the Right of playing the Game. 1 Salk. 344.

The Court was moved for Leave to file an Information against the Defendant, upon an Affidavit of the Prosecutor, that he had lost 15 *l.* to the Defendant at one Sitting; but this was opposed, because the Prosecutor had indicted the Defendant for the same Offence, and the Bill was found; 'tis true the Indictment was quash'd, and the Defendant was never tried upon it; but the Court would not give Leave to file an Information, because the Jury might find another Bill for the same Offence. *Mich. 9 Geo. 1. B. R.*

By 2 Geo. 2. c. 28. §. 9. Where it shall be proved on Oath of two or more credible Witnesses before any Justice of the Peace, as well as where such Justice shall find upon his own

own View, that any Person hath used or exercised any unlawful Game contrary to the Statute 33 *H. 8. c. 9.* the Justice shall have Power to commit such Offender to Prison without Bail or Mainprize, unless he shall enter into Recognizance with Sureties, or without, at the Discretion of the Justice, that he shall not from thenceforth play at or use such unlawful Games.

Now by 12 *Geo. 2. c. 28.* which recites 10 *Æ 11 W. 3. c. 17.* for suppressing Lotteries, and 9 *Ann. c. 6.* enforcing it, and likewise 8 *Geo. 1. c. 2.* which enacts that every Person, who from the 1 *December 1721.* erects, sets up, continues, or keeps, &c. any Office or Place under the Denomination of Sales of Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods or other Things, for the Improvement of small Sums of Money, or shall sell or expose to Sale any Houses, &c. by way of Lottery, or by Lots, Tickets, Numbers or Figures, or that makes, prints, advertises, publishes Proposals or Schemes for advancing small Sums of Money by several Persons, in the Whole amounting to large Sums to be divided amongst them by the Chances of the Prizes in some publick Lottery, or causing such Schemes to be made, printed, &c. or that delivers out or causes or procures to be delivered out Tickets to the Persons advancing such Sums, &c. to entitle them to a Share of the Money advanced according to such Proposal or Scheme, or any Person making, printing, or publishing, or causing to be made, printed or published, any Proposal or Scheme of the like Kind or Nature under any Denomination, Name, or Title whatsoever, forfeits 500 *£.* over and above any Penalty inflicted by any other Act of Parliament; one third Part to the King, one to the Informer, the other to the Poor of the Parish where the Offence is committed; Conviction to be before two Justices on Oath of one Witness, &c.

Such Penalty to be levied by the Distress and Sale of the Offender's Goods, by Warrant of the Justices before whom he was convicted.

Commitment without Bail till the Penalty paid; Appeal is given to the next Quarter-Sessions, whose Determination is to be final.

'Tis enacted, that if any Person from the 24 *June 1739.* erects, sets up, continues, or keeps any Office, &c. by way of Lottery, or by Lots, Tickets, Numbers or Figures, Cards or Dice, &c. or makes, prints, &c. Proposals or Schemes, &c. or exposes to Sale any Houses, &c. by any Game, Method or Device whatsoever, that depends upon or is determined by any Lot or Drawing, whether out of Box, Wheel, or by Cards, Dice, or any Machine, Engine, Device of Chance whatsoever, (Ace of Hearts, Pharaoh, Basslet, and Hazard to be esteemed as Lotteries within the Act) such Party

Party being convicted by Oath or Confession before one Justice or upon View of the Justice, forfeits 200 *l.* to be levied by Warrant of Distress and Sale; one third of the Forfeiture, after Deduction of reasonable Charges of the Prosecution, to the Informer, two Thirds to the Parish where the Offence was committed. If within the City of *Bath*, the two Thirds to go to the Infirmary.

The Adventurers in such Lotteries and Players at such Games, so being convicted as above, forfeit 50 *l.* to be sued for and recovered in like Manner.

Appeal given to next General Quarter-Sessions, of which they are to give reasonable Notice, and to enter into a Recognizance before some Justices of the Peace, &c. with two sufficient Sureties on Condition to try such Appeal at the next Quarter-Sessions, and there the Matter to be finally determined, and not afterwards; and in Case of Affirmance of Judgment, the Appellant to pay treble Costs.

No Conviction or Judgment by this Act to be set aside by the Court of Quarter-Sessions for want of Form, if the Facts alledged in the Conviction are proved to the Satisfaction of the Court; nor is the Conviction, &c. to be removed by *Certiorari* till the Proceedings are first removed to, and Judgment given at, the Quarter-Sessions.

No Conviction to be removed by *Certiorari* till the Party is bound with two sufficient Sureties in the Sum of 100 *l.* with Condition to prosecute it with Effect within six Calendar Months, and pay the Prosecutor his treble Costs and Charges in Case the Order or Conviction is affirm'd.

Offenders not able to pay the Penalties in this Act, or not immediately paying them, or giving Security for the same, may be committed by the Justice or Justices to Gaol for any Time not exceeding six Months.

Justice refusing to do, or neglecting what is required by this Act, forfeits 10 *l.* for each Offence.

Action or Suit against any Person for any Thing done in Pursuance of this Act, must commence within three Calendar Months after the Fact committed, and laid in the County, &c. where the Cause of Action arose; the Defendant to plead the General Issue, and give the Act and the Special Matter in Evidence; and if the Plaintiff is nonsuited, discontinues, or has Judgment against him, he shall recover treble Costs, &c. 12 *Geo. 2. c. 28.*

By 13 *Geo. 2. c. 19. §. 9.* Passage and other Games invented or to be invented with Dice, except Backgammon or other Games now play'd with the Backgammon Tables, are to be deem'd within 12 *Geo. 2.* as Games or Lotteries by Dice, and the Persons keeping Offices or Tables for such Games, or playing at them, are liable to the Forfeitures or Penalties of that Act, &c.

Note

Note on the said Stat. 9 *Annæ*, the Justices are first to send their Warrant to apprehend the Person charged with unlawful Gaming, having no visible Estate; and if convicted, then issues,

The Warrant for Commitment.

To the Constable, &c. and to the Keeper, &c.

Surrey, to **W** Hereas we whose Names are hereunto subscribed, two of his Majesty's Justices, &c. having just Reason to suspect that W. W. of Lambeth in the said County hath no visible Estate, Profession or Calling, but doth for the most part support himself by Gaming; We did therefore on the Day of the Date hereof cause the said W. W. to be brought before us, and upon his Examination, and other due Proof, it appeareth unto us that the principal Part of his Expences is maintained by Gaming; and he being required by us at the same Time to find Securities for his Good Behaviour for twelve Months, refused so to do: These are therefore to require you to convey the said W. W. to the common Gaol for the said County: Commanding you the Keeper thereof to receive him into your Custody, there to remain till he shall give such Security as aforesaid. Given under our Hands and Seal, &c.

An Indictment for playing at Bowls, and keeping a Bowling-alley.

Suffex, to **T** HE Jurors, &c. That J. O. late of H. in the said County, Innholder, on the fourth Day of February in the ninth Year, &c. and from the said fourth Day of February in the same Year above-mentioned to the fifth Day of June in the same Year at L. in the said County, for his Gain, did then and there unlawfully keep and hold a common Bowling-alley for playing at Bowls, contrary to the Form of the Statute in such Case made and provided, and that T. P. late of H. aforesaid in the said County, and for other Persons to the Jurors unknown, on the said fourth Day of February in the same Year above-mentioned, did use and haunt the said common Bowling alley, and then and there unlawfully play with the said Bowls, contrary to the Form of the Statute in such Case made and provided, and also against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

For keeping a Gaming-house.

Suffex, to **T**HE Jurors, &c. That T. P. late of H. in
 wit, the said County, Taylor, on the fourth Day of
 February in the ninth Year, &c. and on divers other Days and
 Times before the Day of this Inquisition, at H. in the said Coun-
 ty, did maintain and keep a common Inn, and did then and
 there suffer divers suspected Persons unlawfully to play with
 Cards and Dice as well in the Day, as in the Night-time, af-
 ter due and lawful Hours, to the Grievance of the Inhabitants
 there, and to the bad Example of other Subjects of our said
 Lord the King, and contrary to the Form of the Statute in such
 Case made and provided, and also against the Peace of our said
 Sovereign Lord the King, his Crown and Dignity.

Greyhound. See Dogs.

Garden. See Hedge-breaking.

Gaol and Gaoler. Vide Prisoner.

IF he permits a Felon to escape, 'tis Felony; but if he
 kill an unruly Prisoner, 'tis not Felony; if by hard Jenk. 23.
 Usage, 'tis Murder.

If he refuse to receive a Felon, being sent to him by
 Warrant, &c. he is finable, and the Township must keep
 him till the Gaol-Delivery.

The Majority of Justices in Sessions, upon Presentment 11 & 12 W. 3.
 of the Grand Jury of the Insufficiency or Inconveniency of cap. 19. s. 1.
 the Gaol, may agree upon such a Sum, as upon Examination
 of able Workmen shall be thought necessary, for building,
 finishing, or repairing thereof.

This Sum, by Warrant under their Hands and Seals, may Sect. 1.
 be levied upon the several Hundreds and Divisions by equal
 Portions.

The Warrant is to be directed by the Justices in Sessions Sect. 1.
 to the High Constables, Petty Constables, Bailiffs or other
 Officers, as they shall think fit, for levying the same.

Persons refusing or neglecting to pay the Assessment four Sect. 2.
 Days after Demand by the proper Officer who is to collect it,
 or conveying away their Goods or Estate, &c. one Justice
 present at that Sessions may make a Warrant to the Collector
 to levy the Sum assessed by Distress and Sale, &c. and keep
 the same four Days before Sale, at the Charge of the Owner;
 and if he doth not pay the Money within the four Days, then
 the

the Goods must be appraised by two Inhabitants where they were taken, or by other sufficient Persons, and sold by the Collector, returning the Overplus, but deducting the Charge of taking and keeping the Distress.

Sect. 2.

Justices in Sessions are to appoint one or more Receivers, giving Security to be accountable for the Money received and disbursed, in Pursuance of such Order as he shall have under the Hands and Seals of the Justices.

Sect. 2.

Officers refusing to account for four Days after Demand, the Justices may commit them without Bail.

The Receipt of the Receiver shall be a Discharge to the other Officers, paying the Proportion of their Assessment.

Sect. 2.

Discharge of Justices under Hand and Seal, in Sessions, to the Receivers, shall be allowed as a sufficient Release in any Court of Law or Equity.

Sect. 2.

Justices may covenant with Persons for building, finishing, or repairing, &c.

Sect. 3.

Murderers and Felons shall be imprisoned in the common Gaol, and not elsewhere.

6 Geo. 1. c. 19.
made perpetual, for so much as relates to the Building and Repairing County Gaols.

The aforesaid Act 11 & 12 W. was to continue for ten Years, and from thence to the End of the next Sessions of Parliament; and now by the Act 10 Anne 'tis continued from the first of May for seven Years, and from thence to the End of the next Session of Parliament.

3 Jac. 1. c. 10.

Prisoner in carrying to Gaol is to bear his own Charges, and the Charge of those who attend him; if he refuse, one Justice may send a Warrant to the Constable of the Place where the Prisoner hath any Goods, to sell as much as by the Appraisement of the Neighbours may be sufficient to satisfy the Charge; and if he hath no Goods, then the Constable and Church-wardens, and two or three of the Parish; or if there are no such Officers, then four of the chief Men of the Parish where the Felon was taken may make a Rate, which one Justice may allow, and then 'tis to be paid; and if any Person refuse to pay it, the Justice may send his Warrant to levy it by Distress, &c. and Sale after Appraisement.

Note; So much of the Act 10 Anne, for reviving and continuing several Acts, as relate to the Building and Repairing of County Gaols is made perpetual by 6 Geo. 1. c. 19.

See the 9 Geo. 2. c. 12. for purchasing Ground and building a Gaol in the County of Kent. And 10 Geo. 2. c. 10. for building a Gaol at Aylesbury in the County of Bucks.

Good Behaviour. See Behaviour.

Cin.

THIS Title is taken from a pernicious spirituous Liquor so called, which has been found to be destructive of the Healths of the inferior and lower Rank of People, (among whom for Cheapness it was chiefly in Vogue) rendring them unfit for Labour, debauching their Morals, and inciting them to all Manner of Vices; to prevent the ill Consequences whereof by the 9 Geo. 2. c. 11. 'tis enacted, that after 29 Sept. 1736. No Person shall retale spirituous Liquors of any Sort in less Quantity than two Gallons, without paying down 50 *l.* for a License at the Excise-Office in *London*, if in the Limits of the Penny-Post; if without those Limits, at the Excise-Office next adjoining to the Person's Place of Residence; and the like Sum of 50 *l.* shall be paid on renewing the Licence every ten Days before the Expiration of the old License, and if any Person presume to offer to sell or retale any spirituous Liquors in any less Quantity, without such Licence, forfeits the Sum of 100 *l.* for each Offence.

Twenty Shillings a Gallon is laid on all spirituous Liquors retaled after the said 29 Sept. 1736. to be paid by the Retailers; and such Liquors retaled in *England, Wales*, or the Town of *Berwick upon Tweed* are to be under the Management of the Commissioners of the Excise in *England* for the Time being, and in *Scotland* of the Commissioners of Excise there.

All Monies arising by these Duties and Licences to be paid into the Exchequer distinctly from all other publick Revenues; and the Act of 12 C. 2. for taking away the Court of Wards and Liveries, &c. and all others relating to the Excise on Ale, &c. to be in Force for the Recovery of these Duties.

An Entry in Writing is to be made of all Ware-houses, &c. at the next Office of Excise, ten Days before retaling such Liquors, on Penalty of twenty Pounds and Forfeiture of 40 *s.* a Gallon with the Liquor and Cask, and no spirituous Liquor is to be brought into any Ware-house, &c. without Notice to the Excise-Officer, and authentick Certificate that the Duties have been paid, &c. on Forfeiture of 20 *l.* and 40 *s.* a Gallon Penalty is laid on increasing spirituous Liquors after the Account taken of them by the Officer for the said Duties; and the Officer may enter Ware-houses, &c. by Day or Night, and taste and gauge the Liquors there found; and any Person obstructing the Officer in his Duty forfeits 50 *l.*

Licenses

Licenses are to be granted only to Persons keeping publick Victualling-houses, Inns, Coffee-houses, Ale-houses or Brandy-shops, and use no other Trade.

Persons paying any Part of Journey-mens Wages in spirituous Liquors shall be deemed Retalers and forfeit 20 *l.* and the Journey-man may recover his whole Wages notwithstanding any such Agreement; nevertheless spirituous Liquors may be used by Physicians, Apothecaries, Surgeons and Chymists in the Preparation of Medicines for sick, lame, or distempered Persons only.

Persons hawking spirituous Liquors in the Streets, Highways or Fields forfeit 10 *l.* and the Offender on refusing or neglecting to pay the same, may be sent to the House of Correction for two Months.

The Retaler is to be licensed by Two or more Justices, for which 2 *s.* 6 *d.* shall be paid, and no more; any Justice may convict a Person selling Beer, Ale, or Strong Waters, or keeping a disorderly House, in the following Form:

Middlesex, **A.** *B. is convicted on his, or her own Confession (or on the Oath of)*
of having sold Beer, Ale or Strong-Waters in the Parish
of *in this County, on the*
Day of *without being duly licensed therein*
by two Justices of the Peace.
 Given under my (or our) Hand and Seal (or Hands and Seals) this *Day of*

Or if for keeping a disorderly House, instead of saying, having sold, &c. say, of keeping a disorderly House, and as Occasion requires, add first, second, or third Conviction.

Persons giving away spirituous Liquors to Servants or Apprentices fetching Goods from their Shops, shall be deemed Retalers.

The Duties arising are made Part of the Aggregate Fund, out of which 70,000 *l.* a Year shall be paid to his Majesty; and if there be any Deficiency, it shall be made good out of that Fund.

Justices of Peace may summon Excise-Officers to give an Account on Oath touching the Entries of spirituous Liquors, &c. made by Persons suspected to sell them without License.

Distillers may follow other Trades, see Title Trade, Vol. 2.

Aqua vita may be sold in Scotland.

The Form of a *Mittimus* to the House of Correction for two Months, on the Offender's refusing or neglecting to pay the 10*l.* Forfeiture, pursuant to the aforesaid Act.

To the Constable, &c.

Middlesex, to **W** Hereas A. B. hath been convicted before me of Hawking, Selling or Exposing to Sale Spirituous Liquors about the Streets in a Wheelbarrow or Basket (or as the Case happens) by Reason whereof he hath forfeited the Sum of 10*l.* which he hath refused or neglected to pay; I do therefore herewithal send you the Body of the said A. B. commanding you to receive him into Custody, there to be kept to hard Labour for the Space of two Months. Given, &c.

But now by 16 Geo. 2. The Duty of 20*s.* a Gallon and 50*l.* for the Licence is repealed, and after 25 March 1743. the several Duties therein mentioned of Six-pence, Three-pence, Three Half-pence and one Penny a Gallon are to be paid for the several Degrees of Strong Waters therein mention'd.

These Rates to be under the Receipt and Management of the Commissioners of Excise, who are to appoint such Officers as are necessary; the Money thence arising to be paid into the Exchequer, distinct from other Branches of the publick Revenue, subject to such Uses as by any future Act of Parliament shall be appointed.

The same Powers, Authorities, Directions, Methods, Penalties, Forfeitures, Clauses, Matters and Things as are in 12 Car. 2. or any other Excise-Act upon Beer, Ale, or other Liquors, for managing, raising, levying, collecting, mitigating, adjudging, ascertaining, recovering and paying the Duties thereby granted, shall be good in this as if expressly mentioned, except in Cases where other Penalties or Provisions are prescribed by this Act. Half of the Fines, Penalties and Forfeitures are to go to the King, the other Half to the Informer.

The Fines, Penalties and Forfeitures in this Act are to be recovered or mitigated by any of the Excise Laws, or by Action of Debt, Bill, Plaint or Information in any of the Courts at Westminster.

Person prosecuted for any Thing done in Pursuance of this Act or any other Excise Act, may plead the General Issue,

Sin. Gunpowder.

and give the special Matter in Evidence, and the Defendant shall recover treble Costs if Verdict is given for him, or Judgment on Demurrer against the Plaintiff, or if the Plaintiff discontinues or is nonsuited.

No Person to retale Geneva, &c. without a License taken out ten Days before, paying 20 s. for the same. If within the Bills of Mortality, the Licence is to be granted under the Hands and Seals of two of the Commissioners of Excise, and to be paid at the chief Excise Office, or at any other Place to such Person as the Commissioners shall appoint, who are to deliver out the Licences. If out of those Limits the Licences are to be granted by the Collectors and Supervisors of Excise within their respective Districts; the Money to be paid at the next Excise-Office.

Fresh Licences are to be taken out ten Days before the Expiration of every Year, paying the same Money, &c.

Retailers of such Liquors without a License forfeit 10 l. for each Offence; one Justice upon Information on Oath of their Refusal or Neglect of Payment, may commit them to the House of Correction to be kept to hard Labour, and the Person not to be discharged till the Payment of ten Pounds or full Expiration of two Months.

No License to be granted to any Persons but such as keep Taverns, Victualling-houses, Inns, Coffee-houses, or Ale-houses, and Licences granted to any other Person are declared to be void.

No Person to be licensed to sell Strong Waters, &c. by Retale, unless they are first licensed to sell Ale or spirituous Liquors, by two Justices of the Peace, &c.

There is a Proviso in Favour of Physicians, Apothecaries, Surgeons or Chymists, that they may use spirituous Liquors in making up Medicines.

None are to be deem'd Retailers who shall not sell less than a Pint.

Gunpowder.

5 Geo. c. 26.
c. 1.

NO Person shall keep more than Six hundred Pounds of Gunpowder, at five Score to the Hundred, in London or Westminster, or the Suburbs, or within three Miles of St. James's Palace, or within three Miles of any Magazine.

Scd 2.

After 1 August 1719, two or more Justices living within the said Limits, may summon before them any Person suspected of keeping Gunpowder, and may examine them on Oath; and if they refuse to be examined, the Justices may commit them

them to the County Gaol, 'till they shall conform to be examined; and if upon such Examination or the Oath of two Witnesses, it shall appear, that such Person hath more than six hundred Weight of Gunpowder, the Justices shall cause him carefully to remove the same out of the Limits aforesaid; which if he refuse to do by the Space of 24 Hours after Notice of any Order made by the Justices for that Purpose, he shall forfeit 20*s.* for every hundred Pounds of Gunpowder, with full Costs, to any Person who will sue for the same in any Courts at *Westminster*, within six Calendar Months after such Notice.

Two Justices after 1 *August* 1719 may issue out Warrants Sect. 3.
to search in the Day-time any Place used for Gunpowder, and to break open the Door of such Place, and the Person hindering such Search forfeits five Pounds to any one who will sue for it, within six Calendar Months after the Offence committed; and if more than Six hundred Pounds shall be found in any such Place, the Justices shall cause the same to be carefully removed at the Charge of the Owner, to be levied by Distress and Sale of his Goods, by Warrant under the Hands and Seals of such Justices.

After 1 *August* 1719, &c. no Person shall carry through Sect. 4.
the Streets of *London* and *Westminster*, or the Suburbs, more than 20 hundred Pounds at one Time, and that it shall be in cover'd Carts or Carriages, and the Barrels shall be close jointed and hooped, and put into Leather Bags, and Gunpowder carried on Horses or by Men, shall be put into Cases of Leather or Canvas, and if carried in a large Quantity in any other Manner, it shall be forfeited and seized by any Person for his own Use, the Offender being lawfully convicted before two Justices.

This Act shall not extend to any of the King's Magazines, Sect. 5;
or to carrying Gunpowder to them.

The Defendant prosecuted for putting this Act in Execution, Sect. 6.
may plead the General Issue, and give this Act, and any Special Matter in Evidence; if he recover, shall have reasonable Costs.

The Action must be laid in the County where the Fact was done, and must be commenced within six Calendar Months Sect. 7.
after it was done.

Justices of Peace of *Effex*, *Kent* and *Surrey*, at their respective Sessions, may appoint some convenient Ground not exceeding two Acres in one Place, and near the *Thames*, on which any Person may build a Ware-house to keep Gunpowder, first agreeing with the Owner, and if such Owner refuse to agree, or cannot by reason of any Disability, then the Sessions may issue out a Warrant to the Sheriff, to impanel a Jury before them, at such Time and Place as shall be appointed in the Warrant; which Jury shall upon their Oaths inquire into Sect. 8.
the

the true Value of the Land, and their Verdict shall be kept with the Records of the Sessions; and the Decree of the Sessions shall be final; and they may send for any Witnesses, and examine them on Oath; and the Sum of Money assessed, not exceeding thirty Years Purchase, shall be paid to the Owner of the Ground; and upon such Payment or his Refusal to accept it, then upon leaving it in Court, for the Benefit of the Owner of the Inheritance of the Ground, shall be vested in the Purchaser and his Heirs, and the Warehouse shall be built in such Manner as shall be directed by the principal Officer of his Majesty's Ordnance.

All Leases, Covenants and Articles made of Ware-houses within *London* and *Westminster*, and the Suburbs, for keeping Gunpowder shall be void, if the Lessees desire it; but no Rent due on or before 25th *May* 1719, on any Deed, for Breach of Covenant shall be discharged.

By 11 *Geo.* 1. c. 23. s. 1. After the first Day of *June* 1725. It shall not be lawful to have or keep within the Cities of *London* and *Westminster*, or within the Suburbs thereof, or within three Miles of the *Tower of London*, or within three Miles of his Majesty's Palace at *St. James's*, or within two Miles of any Magazine erected for keeping Gunpowder belonging to his Majesty for the Use of the Publick, more than 200 *lb.* of Gunpowder at any Time, in any Houses, Store-houses, Ware-houses, Shops, Cellars, or other Places under one and the same Roof; or in any Yard or Yards within the Limits aforesaid, for more than twenty-four Hours, on Pain of forfeiting all such Gunpowder, and the Value thereof, with full Cost of Suit to any Person other than the Owner of, or other Persons interested in such Gunpowder, who will sue for the same by Action, &c. in any of the Courts of Record at *Westminster*, wherein no *Essoin*, &c. shall be allowed, nor more than one Imparance, provided such Suit be commenced and prosecuted within six Calendar Months next after such Forfeiture shall be incurred.

Sect. 2.

The Justices of the Peace authorized by the Act of 5 *G.* 1. c. 26. to issue their Warrants to search after dangerous Quantities of Gunpowder within the Limits aforesaid, shall on Demand made by any Parish Officer, or any two or more Householders being Inhabitants within the said Limits, assigning a reasonable Cause for the same, issue such Warrants gratis; and on every such Search, it shall be lawful for the Searchers, or Persons finding the same, immediately to seize, and then or within twelve Months after such Seizure to amove all such Gunpowder as shall be found within the said Limits exceeding the Quantity allowed by this Act; and every Person willfully obstructing such Seizure or Amoval shall forfeit to the Informer for every Offence 5 *l.* to be recover'd as aforesaid, with Cost of Suit.

If any Person shall use any Iron Hammer, or any Hammer Sect. 3.
 shod or plated with Iron or Steel, in any such Warehouse or
 Place while any Gunpowder is there, the Offender being
 thereof convicted by the Oath of one credible Witness before
 a Justice of the Peace within the said Limits, which Oath
 such Justice is hereby required to administer, shall for every
 such Offence forfeit 20 s. to the Informer, to be levied (in
 Case of Non-payment) by Distress and Sale of the Offender's
 Goods and Chattels, by Warrant under the Hand and Seal of
 any such Justice, rendering the Overplus to the Owner, the
 Charges of such Distress and Sale being first deducted; and
 for Want of sufficient Distress, every such Offender being con-
 victed, as aforesaid, shall be sent by such Justice to the House
 of Correction, there to be kept to hard Labour for any Time
 not exceeding one Month, nor less than fourteen Days, as
 the Justice shall in Discretion think fit.

This Act shall not extend to affect any Magazine or Store- Sect. 4.
 house belonging to the King, where Gunpowder or other
 Stores shall be kept for the Use of the Publick, or to hinder
 the Proving or Trying of Gunpowder by his Majesty's Of-
 ficers as is usual, or to the Carrying of Gunpowder to any of
 his Majesty's Magazines, or with Forces in their Marches.

If any Suit be commenced for any Thing done in Pursuance Sect. 5.
 of this Act, the Defendant may plead the General Issue, and
 recover treble Cost.

The Act 5 Geo. 1. c. 26. and all Provisions, Clauses, &c. Sect. 6.
 therein contained, not hereby alter'd, shall be in Force, and
 may be put in Execution; and the said Act and this Act shall
 be deem'd to be publick Acts, &c.

But it seems that erecting Powder Mills or keeping Powder
 Magazines near a Town is a Nuisance for which Indictment
 or Information will lie. For in *Pasch. 12 W. 3. King and*
Williams, there was an Indictment against *Roger Williams* for
 keeping 400 Barrels of Powder near the Town of *Bradford*,
 and he was convicted accordingly; and in *King and Taylor*,
Pasch. 15 Geo. 2. Information was granted against the De-
 fendant for erecting Powder Mills and Magazines near *Mal-*
den in *Surrey*.

The Summons of a Person keeping Gun- powder.

Westminster, **W** Hereas we have just Cause to suspect W. 5 Geo. c. 26.
 to wit, *R. of the Parish of St. James's in the City* Two Justices.
of Westminster, to keep great Quantities of Gunpowder in his
Warehouse in the said Parish, contrary to the Statute in that
Case made and provided: These are therefore to require you
the said W. R. to appear before us H. C. and T. W. Esqs.

Gunpowder.

two of his Majesty's Justices living within the said Limits, on Thursday next being the 15th Day of this Instant July between the Hours of Three and Four in the Afternoon of the same Day, at the House of W. C. commonly known by the Name of the St. Alban's Tavern in the Parish aforesaid, that you may then and there be examined by us, concerning the Premises: And hereof fail not at your Peril. Given under our Hands and Seals, &c.

A Mittimus, upon his Refusal to be examined.

To the Constable, &c. and to the Keeper of the Gatehouse, &c.

5 Geo. c. 26.
Two Justices.

Westminster, **W** Hereas W. R. of, &c. being justly suspected to wit, to keep great Quantities of Gunpowder in his Warehouse, in the Parish aforesaid, and being duly summoned, did appear before us at a Time and Place for that Purpose appointed, but did then and there refuse to be examined by us upon Oath concerning his keeping Gunpowder: These are therefore to require you to convey the said W. R. to the common Gaol, called the Gatehouse, in the City of Westminster aforesaid, and to deliver him to the Keeper thereof, who is hereby commanded to receive the said W. R. in the said Gaol, and him there safely to keep, till he shall conform to be examined as the Law directs, and for your so doing this shall be your Warrant. Given, &c.

A Warrant to levy on the Owner the Charge of removing his Gunpowder.

To the Constable, &c.

5 Geo. c. 26.
Two Justices.

Westminster, **W** Hereas we H. C. and T. W. Esqs. to wit, of his Majesty's Justices of the Peace for the City aforesaid, and both living within the Limits thereof, did on the 15th Day of August last, issue out a Warrant to you to search in the Day-time the House of W. R. of the Parish of St. James in Westminster aforesaid, being a Place used for Gunpowder; and it appearing to us, that you found upon the said Search seven hundred Weight of Gunpowder and more in the said Place, we did order you carefully to remove the same out of the Limits aforesaid, which was accordingly done on the Day following, and the Charge of the Removal thereof amounts to forty Shillings, which the said W. R. refuseth to pay: These are therefore to require you to levy the said Sum of forty

forty Shillings on the Goods and Chattels of the said W. R. by Distress, &c.

A Warrant to search for Gunpowder.

Middx. to **W** Hereas Notice has been given to us A. and wit, B. Esqs. two of his Majesty's Justices of the Peace for the County aforesaid, That J. S. of, &c. within your Parish, &c. keeps a larger Quantity of Gunpowder in his Warehouse than is allowed by Law: These are, &c. to require you to make diligent Search in the Storehouse of the said J. S. in the Day-time, for such Gunpowder; and if you find therein more than 600 * Pounds Weight, that you certify the * 200 Pounds same to us, in order to our Proceeding therein as the Law di- by 11 Geo. 1. rectAs. Given, &c.

A Warrant to levy 20 s. for using Iron Hammers, while Gunpowder was in the Warehouse.

Middx. to **W** Hereas on the Day of the Date hereof, it was 11 G. 1. c. 23. wit, duly proved before me upon the Oath of C. D. of, &c. a credible Witness, that A. B. hath used Iron Hammers * in his Warehouse, or Place where, and while Gunpowder was kept there, within the Parish of, &c. contrary to the Form of the Statute in that Case made and provided: These are therefore forthwith to require you to levy 20 s. by Distress and Sale of the Goods and Chattels of the said A. B. and that you pay the same to the said C. D. who first informed me thereof. Given under my Hand and Seal, &c.

* Or Hammers plated or shod with Iron or Steel.

Guns.

N One under 100 l. per Annum of Inheritance, or Lease 33 H. 8. c. 6. for ninety-nine Years of 150 l. per Annum may keep 22 & 23 Car. Guns or Pistols; he who hath so much by the Year may 2. c. 25. f. 3. take a Gun from him who hath not, and break it, or forfeits Who may keep them, who not. 40 s. He who keeps a Gun, not qualified, forfeits 10 l.

So likewise none must travel with a Gun charged, who Sect. 3. hath not 100 l. per Annum, except in Time of War; or going to or from Muster, Forfeiture is 10 l.

Guns used by any one not having 40 l. per Annum, or See Dogs, 22 200 l. in Goods, to kill Deer or Conies, any Person having &c 23 Car. 2. c. 25. 100 l.

100 *l.* *per Annum* may take them away and keep them for his own Use. 3 *Jac.* 13. §. 5.

Any Person may bring an Offender against the Statute of 33 *H.* 8. before the next Justice, who upon Examination and Proof may commit him to Prison till he hath paid the 10 *l.* *viz.* One Moiety to the King, the other to him who takes the Offender.

Sect. 4.
Shooting vide
Fowl in Bail.

Shooting must not be near a Market-Town, but in Defence of his House or Person, or at a dead Mark, in Pain to forfeit 10 *l.* between King and Prosecutor.

Prosecution must be within six Months.

Excepted out of this Statute,

Sect. 5.

1. Shooting at Butts by Servants whose Masters are qualified.
2. Inhabitants of Market-Towns.
3. Those who dwell alone or near the Sea-Coast.
4. Gun-makers, or those who sell them.
5. Those who have Licenses at Quarter-Sessions.

Shooting at Duck, Grouse, Heron, Heathcock, Mallard, Pheasant, Partridge, Pigeon, Teal, Widgeon, and being convicted before two Justices by Oath of two Witnesses, or by Confession, must be committed for three Months without Bail, or pay 20 *s.* for every Pigeon killed, &c. to the Churchwardens where the Offence was committed, or where the Offender was taken, to the Use of the Poor. 1 *Jac.* 1. c. 27.

The Form of a Conviction upon the Statute of 33 *H.* 8. c. 6. before one Justice.

Prosecution by a common Person within six Months; by the King within a Year. The Offender must be brought before the Justice immediately upon View of the Offence.

Suffex, to **B**E it remember'd, that on the 4th Day of this Instant Month of February in the ninth Year of the Reign, &c. one T. P. of H. in the said County, Labourer, came before me R. B. Esq; the next Justice of our said Lord the King assigned to keep his Peace in the County aforesaid, and then and there said and deposed on his Oath, that J. O. late of H. aforesaid in the said County, Yeoman, on the first Day of January in the said ninth Year of the Reign of our said Lord the King at H. aforesaid in the said County, had and kept a certain Hand-Gun, and then and there with the Hand-Gun aforesaid charged with Gunpowder and Hail-Shot did unlawfully and unjustly shoot, contrary to the Form of the Statute in such Case made and provided, the said J. O. not then having in his own Right, or in the Right of his Wife, to his own Use,

or any other Person or Persons, having to the Use of the said J. O. Lands, Tenements, Fees, Annuity or Office, to the Yearly Value of one hundred Pounds, and because the said J. O. being arrested and attached was brought before me the said next Justice by the said T. P. for the said Offence, and being charged with the said Offence in Manner aforesaid, could not deny the same; Therefore it is considered by me the said next Justice, that the said J. O. do forfeit and pay the Sum of ten Pounds, according to the Form of the Statute aforesaid; the one Moiety of which said Sum of ten Pounds is to be paid to the Use of our said Lord the King; and the other Moiety thereof is to be paid to the said T. P. being the first Conveyer of the said J. O. before me for the said Offence, according to the Form of the Statute aforesaid; And that the said J. O. be committed to the Gaol of the said County, there to remain till such Time as the said Sum of ten Pounds shall be truly contented, and paid by the said J. O. to the Uses aforesaid, according to the Form of the Statute aforesaid. Raym. 378. 1 Vent. 39, 419. Sid. 247. 1 Saund. 263.

An Indictment for keeping *diversa Tormenta* (*Anglice*, Guns) *carentia longitudine contra formam Statuti* (divers Guns wanting Length according to the Form of the Statute), not good. *Roll. Abr.* 2 Part, 81.

It hath been a Question, Whether an Indictment will lie upon the Statute 2 & 3 Ed. 6. c. 14. before Justices in Sessions, for Want of Jurisdiction; because tho' they have Power by the general Words of their Commission to punish Offences against the Peace, yet this is not such an Offence, 'tis only a Defect in the Qualification of the Person shooting. 4 Mod. 49, 50.

One Cole was brought before R. T. a Justice of Peace in Gloucestershire upon a Warrant for shooting with Hail-shot in an Hand-gun, and upon Examination the Justice finding the Fact to be true, committed him until he should pay the 10 l. one Moiety to the King, the other to the Informer; and having made a Record of this Conviction, it was certified into B. R. upon the Return of an *Habeas Corpus*; adjudg'd, that if the Statute is pursued, no Court could discharge the Defendant without paying the Forfeiture.

W. Jones 170.

The Defendant was convicted upon the Statute 33 H. 8. c. 6. for carrying a Gun, not being qualified, which being removed by *Certiorari*, it was quashed, because the Conviction was, *Coram nobis L. D. & R. L. Justiciariis Domini Regis ad pacem conservand'* (before us L. D. and R. L. Justices of our Lord the King to keep the Peace) leaving out the Word *Assignatis* (assigned). 1 Vent. 39. Saunders's Case. Sid. 419. S. C.

Vide Game.

Hares.

Hares. Vide Hares in Bail.

Hare-Pipes. Vide Dogs.

Vid. Tit. Game.

Offender convicted by his own Confession, or Oath of two Witnesses before two Justices, of killing a Hare, must pay to the Use of the Poor 20 s. where the Offence was committed, or where taken, or else must be committed without Bail for three Months; but after he has been in Prison a Month, he shall be discharged, if he will be bound with two Sureties before two Justices never to offend in that Kind any more. 1 Jac. 1. c. 27.

Selling a Hare, forfeits 10 s. to the Prosecutor and Poor. *ibid.*

Tracing, killing, or destroying them in Snow, forfeits 6 s. 8 d. for each Hare. This is inquirable in Sessions and Leets, and Forfeitures go to the King, if assessed in Sessions. 14 & 15 H. 8. c. 10.

If a Constable, searching by Virtue of a Warrant, find a Hare in the House of a suspected Person not qualified, he must carry him before a Justice; and if he doth not give a good Account how he came by it, or bring the Party of whom he bought it, or some Person to depose such Sale, he shall stand convicted, and pay not under 5 s. nor exceeding 20 s. to the Informer and Poor. 4 & 5 W. & M. c. 23.

Vide Game.

Harvest-time. Vide Apprentices.

Artificers, and Persons fit to Labour, may in Harvest-time be compelled by one Justice or Constable, and upon Refusal, may be put into the Stocks two Days and one Night; and the Constable and other Head Officer is to do it, under the Penalty of 40 s. 5 Eliz. c. 4.

Hawking.

Hawking. See Game.

Hawking in eared Corn is prohibited by the Statute of 23 *Eliz. c. 10.* except by the Owner's Consent; the Penalty is 40 *s.* to be recovered by the Owner in any Court of Record; and one Justice may bind the Offender with good Sureties to answer it at next General Sessions.

A Hawk taken up must be delivered to the Sheriff, if taken by a mean Man; and if not challenged in four Months, the Sheriff having proclaimed the Hawk in the Towns of the County, may keep it.

Stealing of a Hawk, or concealing it after Proclamation made by the Sheriff, Felony: Clergy allowed. 37 *Ed. 3. cap. 19.*

Hawkers and Pedlars.

By the Statute of 8 & 9 *W. 3. c. 27.* it is enacted, That Hawker, Pedlar, or Petty Chapman, or other Trading Person, going from Town to Town, &c. Made perpetual. 3 *Ann. c. 4.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
If on Foot, he must pay	04	00	00
If with Horse, Ass, or Mule	08	00	00

Such Hawker must take a License, &c. and if he travels without, or contrary to his License, he forfeits for every Offence, to the Informer and Poor of the Parish where discovered, 12 *l.* Sect. 2, 3.

Refusing to shew his License, being demanded by any Officer of the Peace, he forfeits to the Poor where the Demand shall be made, 5 *l.* Sect. 3.

And for Non-payment of the same must suffer as a Vagrant, and be sent to the House of Correction. Sect. 3.

Travelling with forged Licenses, forfeits to the King and Prosecutor, to be recovered in the Courts of *Westminster*, 50 *l.* and be subject to the Penalties for Forgery. Sect. 5.

A Constable neglecting or refusing to assist in the Execution of this Act, being convicted on Oath before a Justice of the Peace, forfeits for every Offence to the Poor and Prosecutor, to be levied by Distress, &c. 2 *l.* Sect. 7.

Any Person may seize and detain such Hawker till he produce a License, or if trading without a License, till Notice be given to a Parish-Officer, who is to carry him before a Justice of the Peace, who upon Confession of the Party, or Oath of one Sect. 8.

Hawkers and Pedlars.

one Witness, That the Offender had traded without a License produced, shall by Warrant levy 12 l.

3 & 4 Annæ,
cap. 4. s. 4.

And because some Abuses were afterwards committed by Persons letting out to Hire the Licences by them taken to trade as Hawkers; therefore another Law was made, That every Person trading as an Hawker, &c. shall produce his License on Demand, or otherwise he shall incur the same Forfeiture, as if he had traded without a License; and if any Person lend a License to Hire, either the Lender or the Trader shall forfeit 40 l. and the Lender shall forfeit the License; one Moiety of the 40 l. to the King, the other to the Informer, to be recovered by Action of Debt, Bill, Plaint or Information, &c.

Sect. 14.

And in the same Act it is declared, That Traders in the Woollen and Linen Manufactures, sending their Goods to Markets and Fairs on Horses, and selling the same by Wholesale, neither they, nor those employ'd under them, shall be taken to be Hawkers.

The Officer must render the Overplus after Deduction for the Charge of Distraining, and out of the Sale of the Goods distrained, pay the Penalties and Forfeiture.

Persons excepted out of this Act, viz. 2 W. 3. c. 27. §. 9.

Are Sellers of	{	Acts of Parliament.
		Almanacks licensed.
		Of Goods in Fairs, §. 12.
		Fish.
		Fruit.
		Gazettes.
		Of Goods in Markets, §. 12.
		Prayers, or Forms thereof.
		Prints licensed.
		Proclamations.
	{	Victuals.

Makers of	{	Any Goods or Wares in this Kingdom, and selling Goods of their own making.	} Their	{	Agents.
					Apprentices.
				{	Children.
				{	Servants.

Artificers.	{	Coopers, Glasiers, Harness-makers, Plummers, Tinkers,	}	Or,	{	Other Persons trading in mending Kettles, Tubs, Household-goods or Harness going about and carrying with them proper Materials for mending them.

And

And by the Statute 4 Geo. 1. c. 6. it is enacted, that no Person, who is a Maker or Wholesale Trader in *Engliſh* Bone-Lace, and ſelling the ſame by Wholesale, ſhall be adjudged to be a Hawker, Pedlar, or Petty Chapman, within the Meaning of any of theſe Acts, but that they and their Children, Apprentices and Servants, may go from Houſe to Houſe, to any of their Cuſtomers, without being ſubject to any of the Penalties, &c.

4 Geo. 1. c. 6.
See Tit. Bone-Lace.

A Warrant to levy 12l. for Hawking without a Liſenſe.

To the Conſtable, &c.

Suffex, to **W** Hereas Information hath been given unto me, wit, one of his Maſeſty's Juſtices of the Peace for the ſaid County, upon the Oath of A. B. of, &c. that C. D. of, &c. Labourer, did on the 4th of May Inſtant, trade and hawk without Liſenſe in, &c. and carried about and expoſed to Sale three Pieces of Silks, called, &c. he not being the Ma-ker of ſuch Silk, nor Apprentice, Agent, Child or Servant to the real Worker or Maker of ſuch Silks, he ſo carried abroad and expoſed to Sale as aforeſaid, which the ſaid C. D. hath confeſſed before me upon his Examination, contrary to a late Act of Parliament for liſenſing Hawkers, &c. for which ſaid Offence, he the ſaid C. D. hath forfeited the Sum of 12l. the one Moiety thereof to the Informer, and the other Moiety to the Poor of the Pariſh of, &c. where the ſaid Offence was committed: Theſe are therefore to authorize and require you, or any of you, upon Sight hereof, to demand of the ſaid C. D. the ſaid Sum of 12l. and in Caſe he reſuſe to pay the ſame, that then you levy the ſaid Sum by Diſtreſs and Sale of the Goods, Wares and Merchandizes of the ſaid C. D. rendring to him the Over-plus, (if any be, reaſonable Charges for taking the ſaid Diſtreſs being firſt deducted) to be employ'd to the Uſes above-mentioned; and in Caſe of his Inability for Payment thereof, that then you forthwith bring the ſaid C. D. before me, or any other of his Maſeſty's Juſtices of the Peace of the County aforeſaid, to be further dealt with as the Law in that Caſe provided do direct: And hereof, &c. Given, &c.

Hays. See Dogs.

Hay

Hay and Hay-market.

2 W. & M. St. 2.
cap. 8. f. 16.

Persons offering Hay to be sold within the Weekly Bills, from the last of *August* to the 1st of *June* not weighing Fifty-six Pounds a Truss; (and from the 1st of *June* to the last of *August* sixty Pounds a Truss, New Hay, and fifty-six Old) forfeit 1 s. 6 d. by Distress and Sale; and if not paid in six Days, committed till Payment; if on Conviction, to the Poor and Informer; if on View, to the Poor and Highways.

No Carts, &c. from *Michaelmas* to *Lady-day* to stand with Hay or Straw after Two o' Clock; and from *Michaelmas* to *Lady-day* after Three.

Owners of Hay to pay 3 d. a Load, &c. and of Straw 1 d. to such as the Justices of *Middlesex* and *Westminster* shall appoint, towards amending the Street called the *Hay-market*; on Refusal, Distress by Warrant of one Justice, on Oath of the Party demanding the same, and Sale, &c. in three Days. Posts or Stones to be set up by the Justices for Bounds of the *Hay-market*.

8 & 9 W. 3.
cap. 17.

Toll-taker twice every Market-day to ring a Bell an Hour before; and at the Expiration of the Time, when Carts, &c. are to depart; and Persons not then departing forfeit 5 s. to be demanded the same Day, and Complaint to one Justice (*Quorum*) before next Market-day; Offender to have Notice next Time he comes to Market, else not liable to pay.

Collectors of the Toll, yearly at *Easter*-Sessions, to give the Justices an Account on Oath of their Receipts and Disbursements, and the Overplus to go to the County of *Middlesex*.

Hedge-

Hedge-breaking. See Wood.

B reakers and Cut- ters of	{ Fences, Hedges, Pales, Rails,	{ Any of these Offenders being 43 Eliz. c. 7. convicted before one Justice either upon Confession, or Oath of one Witness, must pay what Damage the Ju- stice shall think fit; and if not able, may be whipped by the Constable, who ne- glecting may be committed without Bail till it be done.
Cutters and Carriers a- way of	{ Corn growing	
Pullers up of	{ Fruit-Trees, with Intent to carry away,	
Cutters and Spoilers of	{ Poles, Trees, Wood,	{ The second Offence is Whip- ping.

In Conviction upon the Statute of 43 *Eliz.* for cutting down Trees in the *Night-time*, the Number as well as the Nature of the Trees ought to be expressed; for in this Respect it is like an Action of Trespass where the Number and Nature of the Trees are to be the Measure of the Damages; and that if Trespass should be afterwards brought for the Trees, the Conviction might be pleaded in Bar.

By a late Statute it is enacted, That he who shall maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface or spoil any Timber-trees, Fruit-trees, or other Tree or Trees, the Person damnified shall recover Damages and Costs against the † Parish or Place where the Injury was done, in such Manner as by the Act 13 *Ed. 1. c. 46.* unless the Parish shall convict the Offenders within six Months after the Offence done.

1 Geo. 1. c. 48.

† This is in Case the Offender cannot be found or known.
Sec. 2.

Upon Complaint of any Inhabitant of the Parish where such Offence was committed, to two Justices, or to the Sessions, they may cause the Offender to be apprehended, and may hear and finally determine the same; and if he shall be convicted, then he shall be forthwith sent to the House of Correction, there to be kept to hard Labour for three Months without Bail; and where there is no House of Correction, then to be sent to the Common Gaol, there to continue for four Months; and they shall order and adjudge the Offender to be whipped by the Master of the House of Correction, once in every Month of the said three Months in a Borough or Corporation, if the Offence is committed therein; and not otherwise; or in the *Market-Town* where the House of Correction stands, or in the next *Market-Town* to it, and in the County where such Offence shall be done, on the Market-Day of such Town, between the Hours of Eleven and Two o' Clock;

o' Clock; and in Places where there is no House of Correction, the said Justices shall order him to be whipped by the Common Hangman once in every Month of the four Months, on the Market-Day of any Borough, Corporation or Town, between the said Hours.

Sect. 3.

The Offender not to be discharged till he hath found Sureties for his Good Behaviour for two Years.

Sect. 4.

If any Person maliciously set on Fire, or burn any Wood, Underwood or Coppice, or any Part thereof, it is *Felony*.

The Defendant was convicted by two Justices, upon the Statute 1 Geo. 1. c. 48. for destroying Fruit-Trees; and it was moved to quash this Conviction, because it did not specify the Punishment inflicted by that Statute; which is, to be sent to the House of Correction for three Months, &c. and the better Opinion was, That this being a Special Judgment of the two Justices, they should have specified the Punishment inflicted by the Statute, because it might be different from the Punishment appointed by them; however, there being no Forfeiture in this Case, it was held, That *Ideo consideratum est, q'd convictus est* (it is therefore consider'd, that he is convicted) was sufficient, without setting forth the Punishment. *Trin. 9 Geo. B. R. King and Ashton, 8 Mod. 175. S. C.*

The Warrant to apprehend the Offender.

To the Constable, &c.

1 Geo. 1. c. 48.
Two Justices.

Surrey, to **W** Hereas E. W. of, &c. hath complained unto us S. E. and J. H. Esq; two of his Majesty's Justices of the Peace for the said County, that R. W. of, &c. did lately commit a Trespass in the said Parish, by maliciously breaking down two Fruit-Trees of the said J. O. These are therefore to require you to apprehend the said R. W. and to bring him before us to answer the Premises, &c.

† Or cut up, or throw down, bark or spoil any Timber or Fruit-Trees, as the Case is.

The Conviction or Mittimus.

To the Constable, &c. and to the Master of the House of Correction at L. in, &c.

1 Geo. 1. c. 48.
Two Justices.

Suffex, to **W** Hereas upon the Complaint of J. O. of, &c. We whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the said County did cause R. W. of, &c. to be apprehended for a Trespass, and being now brought before us, We upon his Examination and other

*Due Proof, do adjudge, That the said R. W. did, on the 5th Day of August last past at L. in the County aforesaid, maliciously † cut down two Fruit-trees of the said J. O. contrary to the Statute in that Case made and provided, of which Offence he now is and doth stand convicted: We therefore require you forthwith to convey the aforesaid R. W. to the House of Correction at L. in the said County, and to deliver him to the Master thereof: And we hereby require you the said Master to receive the said R. W. into your Custody, and him safely to keep in the House of Correction * for three Months next ensuing, and until he shall be legally discharged from thence: And we do likewise hereby order that the said R. W. shall be publicly whipped by you the said Master once in every Month, during the said three Months, in the † Town of L. in the said County, on a Market-Day there, between the Hours of Eleven and Two o' Clock of the same Day; and for your so doing, this shall be your Warrant. Given under our Hands and Seals, &c.*

† Or cut up, pluck up, bark or spoil Timber-Trees, Fruit-Trees, or any other Tree, as the Case is.

* Must give Sureties for his Good Behaviour for two Years.

† If the Offence was done in a Borough, or in a Corporation, then he must be whipped there.

Any Person or Persons after the 24 June 1720.

6 Geo. 1. c. 16.

Barking	} Any {	Coppices,
Breaking		Pales,
Burning		Quicksets,
Carrying away		Springs of Wood,
Cutting		Thorns,
Defacing		Tops of Trees,
Destroying		Underwoods,
Plucking up		Wood-Springs or
Spoiling		Woods;
Taking or Throwing down		

without the Consent of the Owner, or of the Person chiefly entrusted with the Care and Custody thereof; or

Breaking open	} Any {	Banks,
Destroying		Dikes,
Levelling or		Ditches,
Throwing down		Fences,
		Gates,
		Hedges,
		Posts,
		Rails,
	Stiles or	
	Walls;	

or other Enclosures of Woods, Wood-Grounds, Parks, Chases, or Coppices, Plantations, Fruit-Trees, or other Trees, Thorns

Hedge-breakers.

* This is where
the Offender
cannot be ta-
ken.
Sec. 2.

or Quicksets; he who is damnified shall have Recompence of the Inhabitants of the Village adjoining; as by the Act * 13 Ed. 1. unless the Offender shall be convicted by the Parish, within six Months after the Offence committed.

Any Person or Persons after the 24th of June 1720, either in a riotous and open, or secret and clandestine Manner, forcibly, wrongfully and maliciously, without the Consent of the Proprietor, Wood-keeper, or Person chiefly entrusted with the Care of Woods, Wood-Grounds, Parks, Chases, Coppices, or Plantations; and who shall

Bark
Break
Burn
Carry away
Cut down
Deface
Destroy
Spoil
Take or
Throw down

} Any { Coppice Wood,
Underwood,
Wood or
Wood-Springs;

Or { Break open
Destroy
Level or
Throw down }

} Any { Banks,
Ditches,
Fences,
Gates,
Hedges,
Posts,
Rails or
Stiles;

or any Enclosures of such Woods, Underwoods, Coppices, Plantations, Timber-Trees, Fruit-Trees, Thorns or Quicksets, then two Justices of the Peace of the County where such Offence was done, or the General Sessions, may upon Complaint to them made by any Inhabitant of the Parish, &c. or by the Owner of such Trees, or of any other, cause such Offender to be apprehended; and may then hear and finally determine the same; and if the Offender shall be convicted, then to inflict all and every the Penalties on him, as in the Act 1 Georgii is enacted.

Sec. 3.

Proviso, if any Person is sued at Law for what he hath done in Pursuance of these Acts, he may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff is Nonsuit, or a Verdict for the Defendant, he shall have treble Costs.

The former Act 1 Georgii, c. 43. extended only to the malicious *Breaking down, Cutting up, Plucking up, Throwing down, Barking, or otherwise Defacing or spoiling Trees*; but this

this Act 6 Geo. extends to the same in a more ample Manner; and likewise to the Preservation of all the *Enclosures* about the same; and the same Warrant to apprehend the Offender, and the same Conviction and *Mittimus* will serve as in the former Act *mutatis mutandis*.

No Justice shall proceed for any of these Trespasses done to himself, without the Assistance of another Justice.

Constable, or any other Person, may take Persons who are suspected of having, &c.	Bark, Broom, Furze, Gates, Hedge-wood,	Pales, Poles, Posts, Rails, Stiles,	Trees growing, Underwood, Wood;	15 Car. 2. c. 2
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and by Warrant from one Justice, may search their Houses; and if they find any of these Things, may carry the Person before a Justice; and if such Person cannot satisfy the Justice how he came by them, &c. or doth not within a Time limited produce those of whom he bought them, or some Witnesses who will depose of whom bought, he shall be deemed as convicted upon the Statute of 43 Eliz. aforesaid, and be subject to the Punishment therein contained; and besides, for the first Offence,

- (1.) He shall make such Recompence, and within such Time as the Justice shall appoint. And likewise,
- (2.) He shall pay to the Overseers of the Poor where the Offence was done, not exceeding 10 s.
- (3.) In Default thereof, he must be sent to the House of Correction for any Time not exceeding a Month.
- (4.) Or be whipped.

Second Offence, must be sent to the House of Correction for a Month, and be there kept to hard Labour.

Third Offence shall be deemed incorrigible Rogues.

Besides these Statutes, there is a very ancient * Law, by which 'tis enacted, That if Hedges are destroy'd *noctanter* (in the Night), and it cannot be known by the Verdict of a Jury who were the Malefactors, that the Towns near adjoining shall be distrained to satisfy the Damages; and there have been Writs framed upon this Law, and Prosecutions thereon.

* W. 2. c. 49.
Cro. Car. 280.
439.
Sid 107, 312.
Style 215.
1 Leon. 108.
Raym. 487.

But cutting down Timber-trees *noctanter* is not within the Statute, because the Words are against those who *fossatum & sepem prostraverunt* (who have destroy'd Hedge and Ditch).

A Warrant against a Hedge-breaker.

To the Constable, &c.

† If the Justice doth not think him able, he may order him to be whipped. Like Punishment for an Accessary.

Suffex to **W** Hereas it hath been duly proved before me wit, R. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That T. P. of, &c. hath within six Weeks last past, broke the Hedge of, &c. (or as the Case is) contrary to the Lawes in that Case made and provided: I do therefore hereby † appoint the said T. P. within five Days after Notice hereof to pay unto the said J. S. 9 s. in Recompense and Satisfaction for the Wrong so done, as aforesaid; and if the said T. P. shall not pay the same, that then you inform me thereof, that such further Proceedings may be had against him for the said Offence, as the Law requireth. And hereof fail not. Given, &c.

Upon Non-payment, to be whipped.

To the Constable, &c.

Suffex, to **W** Hereas it hath been duly proved before me wit, R. B. Esq; being a Justice of the Peace for the County aforesaid, That, &c. (as in the former Warrant): And whereas the said T. P. hath not paid or discharged the said J. S. for the Damages done to him, the Sum of 9 s. by me appointed for him to pay: Therefore I do hereby order, That the said T. P. be forthwith committed to the said Constable of, &c. to be whipped; which you the said Constable are hereby required to do, or cause to be done, at your Peril. Given under my Hand, &c.

A Conviction and *Mittimus* for destroying Trees.

1 Geo. c. 4.
Two Justices.

Suffex, to **W** Hereas on the Complaint of A. B. &c. We wit, whose Names are hereto subscribed, two of his Majesty's, &c. did cause E. J. to be apprehended for a Trespass, &c. and he being now brought before us, we upon Examination and due Proof of the said Trespass made, do adjudge, That the said E. J. did on, &c. at, &c. maliciously cut down (or pluck up, bark or spoil) so many Fruit-Trees, Timber-Trees, &c. contrary to the Statute in that Case, &c. of which Offence he now stands convicted: We therefore require you to convey the said E. to the House of Correction at L. in this County

County, and to deliver him to the Master thereof: And we do also hereby require you the said Master to take him into your Custody, and him safely to keep in the House of Correction for three Months next ensuing, and until he shall be legally discharged from thence: And we do likewise hereby order the said E. to be publickly whipped by you the said Master, once in every Month during the said three Months, in the Town of M. in the said County, on a Market-Day there, between the Hours of Eleven and Two o' Clock; and for so doing this shall be your Warrant, &c.

He must give Sureties for his Behaviour for two Years.

Note; If the Offence was done in a Borough, or corporate Town, then the Warrant must be to whip him there.

If any Justice find upon Examination upon Oath, that any one hath bought stolen Wood, he may order such a Buyer to pay the treble Value to him from whom it was taken; and in Default of present Payment, may levy the same by Distress; and in Default thereof may be committed for a Month.

25 Car. 2. c. 2. l. 4.

See the Warrants thereupon, *J. S.* 528.

See the Act for new Making or Cutting low Hedges, under Title *Highways*.

Hemp. See **Wool**, and working therein.
Hides and Skins. Vide **Leather**.

Highways.

PPrivate Ways are to be repaired by the Village, and sometimes by a particular Person; but publick Ways by the Parish, unless a particular Person was obliged by Custom or Prescription; and Clergymen are liable to all Charges imposed by Act of Parliament, and in particular to repair Highways. 1 *Vent.* 273. *Dr. Webb and Batchelor*, 2 *Lev.* 139. *S. C.*

The Statutes which relate to Highways in general are four, viz. 2 & 3 *P. & M. c. 8.* 5 *Eliz. c. 13.* 18 *Eliz. c. 10.* 22 *Car. 2. c. 12.*

But now by the Statute of 3 & 4 *W. & M. c. 12. §. 3.* Those former Laws are altered in many particulars; upon which Statute these Things are to be considered, viz.

* On the 26th Day of *December* every Year, unless that * *Surveyors* happen on a *Sunday*; and then they must be chosen the Day when to be following, after this Manner. chosen, &c.

Viz. The Parishioners being met are to make a List of a competent Number of Names thus qualified:

G g 3

1. They

1. They must have an Estate of 10 *l. per Annum*, either in their own Right, or in the Right of their Wives.
2. Or they must be worth 100 *l.* in personal Estate.
3. Or Rent 30 *l. per Annum*.

If there are not any such Persons in the Parish, then a List must be made of the most sufficient Persons.

The List must be returned to two or more Justices of the Peace near the Division in which the Parish lieth, at a special Sessions to be held on the third Day of *January*, or within fifteen Days afterwards.

The Constables neglecting to return such List, do each of them forfeit 20 *s.*

Out of this List so returned, the Justices at that Sessions do appoint one or more to be Surveyors, &c. by an Order under their Hands and Seals.

The Person thus appointed must within six Days afterwards have Notice thereof given unto him by the Constable, leaving a Copy of the Justice's Order at the House of the Party, and then he must take upon him the Office.

But if he refuse, being so nominated and appointed, and served with the Order, then he forfeits 5 *l.* to be levied by Warrant from Justices of the same Division, or in Default thereof from the neighbouring Justices, upon Oath made, &c.

The Forfeiture being levied, one Moiety is to go to the Informer, and the other to repair the Highways; and the Justices may appoint one or more Surveyors again, who upon Notice, must take upon him or them the Office, &c. under the same Penalty.

His Duty when chosen, *f. 8.*

* By Stat. 1 G. must be to the Special Sessions.

† By 1 Geo. 1 c. 52, it is the Special Sessions.

He must within fourteen Days after the Acceptance of his Office, and so from Time to Time every four Months, view the Roads and Bridges, &c.

He must present upon Oath * before some Justice, &c. such Ways which are not in Repair, or he forfeits 5 *l.* unless † two Justices shall allow his Excuse.

He must give publick Notice from Time to Time every four Months what Defaults he finds; this Notice must be given in the Parish Church the next *Sunday* after Sermon ended; and if not amended within thirty Days afterwards by those who ought to repair, &c. then the Surveyor must within other thirty Days next following amend the same.

He must give an Account upon Oath at a Special Sessions, of all Money that comes to his Hands, and how disposed, &c. and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands; to be levied by Warrant of two Justices, one Part to the Informer, &c.

If

If he neglects his Duty in any Thing, he is to forfeit 40 s. one Moiety to the Informer, the other to amend the Highways; and this Forfeiture may be levied by a Warrant from two Justices.

1 Geo. 1. c. 52.

Not giving an Account of the State and Condition of the Highways, but more especially of such Faults and Defects as want to be amended, and of those who are bound to find Labourers and Teams, forfeits 5 l. one Moiety to the Informer, the other to amend the Highways, unless the Justices in such Special Sessions allow a reasonable Excuse.

1 Geo. 1. c. 52.

They must take the first reasonable Time to repair the Ways, and that it may be done before Harvest, if possible, and must repair those Ways first, which the Justices in their *Special Sessions* shall order to be repaired, if any such Order there be.

He is to appoint six Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed; at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. Luke.

Concerning working in the Ways, and who are chargeable.

Every Man keeping a Horse-Team must send out a Cart and two able Men, and if he keeps * Oxen, then he must send them out, and a Wain with two Men, every Day so appointed by the Surveyor; and if he keeps both, then he must send that which will do best Service, or forfeits 10 s. for every Day wherein he makes Default.

* As many Draughts as he keeps, so many he must send out.

If all the Carriages in the Parish shall not be thought necessary by the Surveyors, then the Person whose Carriage is spared must send out two able Men, or forfeit 10 s. for every Man not sent.

Every Householder, Cottager and Labourer, must either work themselves, or hire one to work each of those six Days, or forfeit 12 d. per Day; and all of them must work eight Hours every Day.

By Stat. 22 Car. 2. c. 12. 'tis 1 s. 6 d.

If any Man hath a ‡ Plow-land or Pasture in several Parishes, he shall be chargeable only in the Parish where he lives; but if he keeps in his Occupation several Plow-lands or Pastures, &c. in several Parishes, he shall be chargeable in every Parish.

‡ Formerly 100 Acres, but now 80 Acres, By 7 & 8 Will. 50 l. per Ann. is a Plow-land.

In such Place where Carts are not used, the Inhabitants must send Horses, according to the Custom of the Place, with able Persons, &c. under the like Penalty.

A Parson is not chargeable for his Glebe; but if he use other Land, 'tis otherwise.

The Surveyor may complain to the next Justice, &c. who, upon Oath made of the Default, may send his Warrant to levy the Forfeitures by Distress and Sale of Goods, viz.

How the Penalties are to be levied.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On a Labourer neglecting	0	1	6
For every Man and Horse, &c.	0	3	0
For every Cart with two Men,	0	10	0

for every Day they shall neglect; which Penalties, when levied, must be employ'd towards the Amending the Ways.

Bushes in
Highways.

These must be cut down by the Owner of the Soil within ten Days after Notice given by the Surveyors, on Pain of 5 *s.* to be levied for every Neglect, on the Goods of the Offender by Distress, &c. on Warrant of two Justices of the same Division; or in Default thereof, by any Neighbouring Justices; but there must be Oath made by one Witness; one Moiety of the Forfeiture is to the Informer, the other towards the Repairing of the Ways. 3 & 4 *W. & M. c. 12.*

No Bushes, Trees or Shrubs, shall grow or stand, or Bough or Branch over-hang a Highway not twenty Foot Broad. Offenders forfeit 5 *s.* to be levied and employ'd as aforesaid.

How broad
Highways
must be.

A Surveyor may make every Cart-way leading to a Market-Town eight Foot broad at least, and as near as he can level; but the Statute appointing no particular Penalty against a Surveyor offending this Branch of the Statute, it may fall under the general Clause of neglecting his Duty in any Thing required by the said Act, and then the Penalty will be 40 *s.* For making the Way broad, is a Thing required by this Law, though there is no Provision how, or after what Manner, *viz.* By laying Part of the adjoining Lands to where the Ways are narrow, which cannot be done without the Consent of the Owners. 3 & 4 *W. & M. c. 12.*

Causeways for Horses must be three Foot broad.

These are Stones, Gravel, Sand, &c.

Materials for
amending the
Ways.

The Surveyors, &c. may take Stones and Rubbish already dug out of any Quarry, without Leave of the Owner, but cannot dig without Leave; yet they may gather Stones in any Land, without being Trespassers.

For Gravel they may dig in any Ground near the Highway, but not in an House, Garden, Orchard or Meadow; and it must be but in one Pit or Hole, not above twenty Foot in Length and Breadth; which Hole must be filled with Earth at the Charge of the Parish within a Month afterwards, under Penalty of five Marks, to be recovered by Action of Debt.

7 & 8 *W. f. 6.*

Those who pull up, cut or remove any Post, Block, great Stone, Bank of Earth, or other Security of a Horse-way or Causeway from Waggon, Carts, &c. forfeit for every Offence 20 *s.*

The Conviction is to be by Oath of one Witness, before one Justice of the Division, or upon his own View; and 'tis

to be levied by his Warrant by Distress and Sale, &c. one Moitey to the Surveyors to repair the Ways, the other to the Informer.

When they have laid out their own Money to buy Materials, as Sand, Gravel, &c. in Parishes where they have none, they must attend the Justices at a Special Sessions, and make Oath what Money they have expended, &c. and then two Justices at the Sessions may make a Rate upon every Inhabitant, Parson, Vicar, and other Occupier of Lands, Tithes, Woods, &c. in the Parish; which Rate being allowed by the said Justices in their Special Sessions, may be levied on Persons refusing to pay, by Distress, &c. 3 & 4 W. & M.

By the Statute of 5 Eliz. those who have Lands adjoining to the Highway, in which Ditches ought to be, must scour them as often as there is Occasion, and lay Trunks or Bridges where there are Cart-ways into any Ground, that the Water may have a free Passage, upon Pain to forfeit 12 d. per Rod; but by the Statute of 3 & 4 W. & M. if they neglect ten Days after Notice, the Forfeiture is 5 s. which is to be levied by Warrant of two Justices of the same Division, &c. upon Oath made, &c. one Moitey to the Informer, the other to amend the Ways.

Of Rates to reimburse Surveyors.

Of Annoyances in the Highways by Ditches, &c.

The Person who ought, and who neglects or delays, for thirty Days after Notice by the Surveyor to scour and keep open his *Ditches* near the Highways; and Oath being there of made before the Justices at their Special Sessions, he forfeits 2 s. 6 d. for every eight Yards of Ditching not scoured and kept open, to be levied by Warrants under the Hands and Seals of the Justices in such *Special Sessions* by Distress and Sale, &c. the Forfeitures to be accounted for by Surveyors for amending the Highways.

1 Geo. c. 52.
l. 8.

If in scouring the Ditches they lay the Soil in the Highway, and suffer it to lie there * six Months, they forfeit 12 d. per Load; but by the Statute of 3 & 4 W. & M. if not carried away within ten Days after Notice, 5 s. for every Offence, to be levied and employed as aforesaid.

* By 1 Geo. 1. c. 2. l. 8.
'tis 8 Days after Notice; the Forfeiture is not exceeding 5 l. nor under 20 s.

The Surveyors have Power to turn any Spring or Water-course out of the Highways into those Ditches; and where the Ditches already made are not sufficient to carry away the Water, they have Power by 3 & 4 W. & M. to make new Ditches and Drains in and through the Lands adjoining, which they must keep *scoured*; and for that Purpose may with Workmen come upon the said Lands, without being Trespassers.

1 Geo. 1. c. 52.

Persons laying any Thing in the Highway not twenty Foot broad, forfeit 5 s. to be levied and employ'd as aforesaid; and if Timber, Stone, Hay, Straw or Stubble, or other Matter for making Dung, or any other Pretence, shall be

be

be laid in any Highway, those who possess Lands next adjoining may remove and dispose thereof to their own Use.

Cannot lay Logs of Timber in the Highway, tho' there is a sufficient Room for Travellers left.

Of Prosecution
upon the Sta-
ture 3 & 4 W.
& M
Appeal.
Certiorari.

All Matters concerning the Highways must be determined in the County where they lie, and not elsewhere; and none shall be punished, unless prosecuted within six Months after the Offence is committed. The Party grieved may appeal from any Act done by the Justices to the Quarter-Sessions, whose Order shall conclude all Parties; and no Presentment, Indictment or Order, shall be removed by *Certiorari*. If any Action should be commenced against those who put that Act in Execution, they may plead the General Issue, and give the Act itself and the Special Matter in Evidence; and if the Plaintiff be non-suited, discontinued, or a Verdict against him, the Defendant shall have double Costs.

Vide 1 Geo. 1.
c. 52.

The Power of
the Justices,
&c. and what
they are in-
joined to do.

The Justices of the Division are to hold a Special Sessions in the Division, &c. every Year on the 3d of *January*, or within fifteen Days after, of which they are to give Notice ten Days before they hold the same to every Constable within the Division.

They are to nominate under their Hands and Seals, out of the Lists brought unto them, one or more Surveyors of every Parish within the Division, for the Year ensuing; and upon the Refusal of the Party so nominated, and paying the Forfeiture of 5 *l.* for which they are to make a Warrant upon Oath of one credible Witness, then they are to nominate some other fit Person.

1 Geo. 1. c. 52.

Two of them may allow a reasonable Excuse of a Surveyor not viewing or not presenting, every four Months, in what Condition the Ways are.

If Notice is given on *Sunday* after Sermon next after any Default found; if within thirty Days after such Notice the Party who ought to amend it, neglect so to do, and if the Surveyor within thirty Days afterwards doth amend it, and the Party neglecting refuseth to pay the Charges, then upon Oath made of Notice, &c. as aforesaid, the Party shall be repaid such Charges as the Justice shall think fit, which is to be levied by his Warrant, &c.

They are once in four Months to hold a Special Sessions, and summon the Surveyors thereunto, and to tell them what they are obliged to do.

1 Geo. 1. c. 52.

At this Sessions the Justices may, by Writing under their Hands and Seals, order the Reparation of those great Roads which do most want Repairing in that Hundred where the Sessions is, which shall be first repaired, and in what Time and Manner.

They may likewise at this Sessions examine on Oath any Person who can give an Account of Money, which ought to be

be applied for mending the Highways, and levy the Penalties, and dispose the Forfeitures; one Moiety to the Surveyors of the Highways where the Offence was done, towards the Repairs thereof, and the other to the Informer.

If any Fine or Forfeiture imposed on any Parish be levied upon any particular Inhabitant, then upon Complaint thereof to the Justices at the Special Sessions, they or two of them may, by their Warrant, cause a Rate to be made to repay that Person or Persons; which Rate the Surveyors shall levy and pay within a Month after the Making thereof.

The Justices in their Quarter-Sessions not being satisfied that the Ways can be amended without the Help of the Act of 3 & 4 W. & M. may cause Assessments to be made on every Person usually rateable to the Poor, not exceeding 6 *d.* in the Pound for the Yearly Value of the Lands, nor of 6 *d.* for every 20 *l.* personal Estate. * These Assessments must be made and levied by such Persons, and in such Manner as the Justices in their Sessions shall direct and appoint; and the Money must be employed according to their Order for repairing of the Highways; and if not paid within ten Days after Demand, may be levied by Distress.

* 1 G. 1. c. 52. Notwithstanding the six Days Work hath not been performed.

Any Person grieved by such Assessment may appeal to the Quarter-Sessions, whose Order shall be final.

The next *Quarter-Sessions* may make such an Order as they shall think fit, where any Person finds himself aggrieved by any Thing done in Execution of the Statute 1 *Georgii, cap.* 48. except for the Neglect of scouring Ditches, and carrying away the Earth taken out of the same, or who shall not carry away Stone, Timber, Straw or Dung left in the Highways, or not remove any other Annoyances by Water-courses, &c.

1 Geo. 1. c. 52.

The Justices of *Middlesex* may, at their Quarter-Sessions, make Rates for paving *Kensington, &c.*

3 & 4 W. & M.

The Justices of every County, at *Easter Sessions*, shall assess the Prices of all Land-Carriages of Goods to be brought into any Place within their Jurisdiction by any common Carrier, and shall certify such Rates to the Mayors or chief Officers of every Market-Town.

The Justice neglecting or refusing to do what is required by the Act, forfeits 5 *l.* one Moiety to the Prosecutor, to be recover'd by Action of Debt in any of the King's Courts of Record, the other Moiety to be employ'd to amend the Highways where the Prosecutor liveth.

The *Quarter-Sessions* may appoint *Scavengers*, and order the Repairing and Cleansing the Streets in any City or Market-Town, and may appoint Persons to make *Assessments* on all Owners and Occupiers of Lands and Houses equally, not exceeding 6 *d.* per Pound per Annum, to defray the Charges of such *Scavengers*; which Assessment being allowed under the

1 Geo. 1. c. 52. By 9 Geo. 2. c. 18. s. 1.

the

the Hands and Seals of the Justices, &c. may be collected by such Persons as they appoint, and be levied by their Warrant, on the Goods of those who shall not pay it within eight Days after Demand; and the Money thus raised shall be employed and accounted for according to the Direction of the Justices, for repairing and cleansing the Streets.

The Servants or Clerks of the Justices at their Special Sessions shall not take any Thing of a Surveyor for his Oath, or his Account given in to them, upon the Forfeiture of 10*l*. to be recovered in any Court of Record.

The Authority
of the Justices
by other Acts.
2 Saund. 160.

By 2 & 3 Phil. & Mar. and 5 Eliz. c. 13. any Justice may, upon his own Knowledge, present at the General Sessions any Offence concerning Highways; upon which the Court may assess a Fine, tho' the Offender is absent; which Fine shall not be taken off, unless the Party presented do certify the Amendment of the Ways.

The Form of which Presentment is as followeth:

Suffex, to **B**E it remember'd, *That R. B. of, &c. one of our* wit, *the Justices of our Sovereign Lord the King assigned to keep the Peace in the County aforesaid, as also to hear and determine diverse Felonies, Trespases and other Misdemeanors committed in the said County at this General Sessions of the Peace for the County aforesaid, held at Lewes within the said County on the twenty-second Day of October in the ninth Year of the Reign, &c. before W. N. &c. Justices of Peace in the County aforesaid, by Virtue of a Statute of the Lady Elizabeth, late Queen of England, in a Parliament held at Westminster on the twelfth Day of January in the fifth Year of her Reign, and according to the Form and Effect of the said Statute, intituled, (An Act for the Continuance of the Statute made 2 & 3 P. & M. for the Amendment of Highways) upon his own proper Knowledge presented, that a certain common and antient Highway, within the Parish of H. in the County aforesaid, which leads from the Parish aforesaid to the Town of L. in the said County (the same being a Market-Town) from a certain Place called B. in the Parish of H. aforesaid to a certain Place called C. in the Parish of H. aforesaid, is not well and sufficiently repaired and amended, according to the Form and Effect of the Statute aforesaid, but that the same is now in great Decay, so that the Subjects of our said Lord the King cannot pass or travel without great Danger in the Highway aforesaid, with their Horses, Waggon, Carts, Carriages, and other Necessaries, as they used and ought to do. In Witness whereof the said R. B. hath hereunto set his Hand and Seal, &c.*

The Order thereon.

UPON which, at the same General Sessions of the Peace there held the same Day and Year above-mentioned, the said Justices of our Lord the King, assigned to keep the Peace of our said Sovereign Lord the King in the County aforesaid, have assessed and imposed a Fine of twenty Pounds to be levied of the Inhabitants of the said Parish of H. by Default of whom the said Highway is not sufficiently repaired according to the Form of the Statute aforesaid, if the said Highway shall not be sufficiently repaired and amended before the Feast of St. John the Baptist next ensuing the Date hereof.

'Tis to be observed, That upon such a Conviction the Decay of the Highway cannot be traversed; but the Defendant may plead, that some other Person ought to repair, and traverse that he ought not. 2 Saund. 160.

Any Officer receiving Estreats for levying Forfeitures, &c. and neglecting or not accounting and paying it between the first Day of *March* and the last Day of *April* to the Constables, &c. every Justice knowing any of these Defaults may present it.

Two Justices (*Quorum Unus*) may take Account of a High Constable, and may compel him to pay the Fines levied to the Petty Constable, or commit him; but he must be allowed 8 *d.* per Pound for gathering, and 12 *d.* for the Fee of the Estreat.

Any one Justice upon Complaint, may compel those who have been Constables to pay the Arrears of Money by them levied on Estreats.

Charities for repairing Ways are under the Government of Justices, &c. in their Sessions, if Trustees of such Charities are faulty in not letting the Lands at the improved Rents, or taking Fines. 22 Car. 2. c. 12.

One Justice of Peace, upon his own View, or upon Conviction by the Oath of one Witness, may commit him who resists any Person employ'd to put the Acts concerning Highways in Execution, or of rescuing Goods distrained, until he pay forty Shillings to the Surveyor, if he refuse to pay the same within seven Days after the Notice of such Conviction. 22 Car. 2. c. 12.

By this Act, Carriages with Burdens are not to be drawn with above five Horses at Length; but if they draw with more, it must be in Pairs. Offenders forfeit 40 *s.* for every Offence; one Third to the Surveyor, another Third to the Poor, another to the Informer.

But

7 & 3 Will. 3.

But by a late Act 'tis enacted, that no Travelling Waggon, Cart or Carriage, whereon Burthen shall be drawn for Hire (except about Husbandry, Manuring of Lands, carrying Hay, Straw, Corn unthrashed, Coal, Chalk, Timber Materials for Building, Stones or Artillery) shall go in any Highway, or be drawn with above the Number of Horses and Oxen following.

If with Horses, then not above eight, which must draw in Pairs, as hereafter mentioned.

If with Horses and Oxen
it must be thus, viz.

Eight Oxen and one Horse.
Six Oxen and two Horses.
Two Oxen and six Horses.
Four Oxen and four Horses.

Which Horses and Oxen must draw in Pairs, with a Pole between the Wheel Horses, or in double Shafts, and the other Horses to draw in a Line with the Wheel-Horses or Oxen, as they usually draw in Coaches.

The Owner of the Waggon, Cart, Horses or Oxen, forfeits for every Offence 40 s. whereof Two Thirds go to repair the Highways, and the other Third to the Informer to be * levied by Distress of any one of the Horses or Oxen, by the Constable, Headborough, Surveyor of the Highways, by Warrant from one Justice; the Conviction must be by the Oath of one Witness, or View of the Justice.

If the Penalty is not paid within three Days the Officer may sell it, restoring the Overplus, the Charges of the Distraining, selling and keeping being first deducted.

But this Part of that Act being found to be impracticable in some Places of this Kingdom; therefore by † another Statute, the Drawing in Pairs with a Pole between the Wheel-Horses, or in double Shafts, &c. was repealed.

And by the said Act 'tis further provided, that after the 24th of June 1708, no travelling Waggon or Cart, wherein any Burden shall be carried (except as in the former Act is excepted) shall be drawn with more than six Horses, Oxen or Beasts, upon Pain that the Owner of such Waggon shall forfeit for every such Offence 5 l. one Moiety to the Surveyor of the Highways of the Place where the Offence was committed, to be employ'd in the Repairs thereof; the other Moiety to the Discoverer or Prosecutor, so as such Discoverer be an Inhabitant of such Place.

This Penalty is to be levied by Distress of the Horses or Oxen of the Owner of the Waggon, by Virtue of a Warrant under the Hand and Seal of one Justice of Peace; and if not paid within three Days after the Distress taken, the Person distraining, may sell the same, rendring the Overplus, after Charges deducted.

* 22 Car. 2.
c. 12. as by
that Act.

† 6 Annæ,
c. 29.

Surveyor wilfully suffering a Waggon, &c. to be drawn with more than six Horses, and neglecting to put this or any former Act in Execution, for repairing Highways, forfeits 5 *l.* to be divided and recovered as aforesaid.

Clause of drawing up-hill is repealed by the Statute 9 *Ann.* cap. 18.

By which Statute 'tis enacted, That any Person may distress or seize Horses, Oxen or Beasts drawing with more than six Horses, (against the Statute 6 *Ann.*) and deliver them to the Surveyor or other Parish-Officer of the Place where the Offence shall be committed. And if the Penalty of 5 *l.* inflicted by that Act, is not paid in three Days, the Surveyor or other Parish Officer may, by the Warrant of one Justice, sell the Distress, and deliver the Money to the Justice, who must * distribute it, as by that Act is directed.

9 A. c. 13.

* One Moiety to the Surveyor, the other to the Prosecutor.

The Person seizing, &c. but neglecting to bring the Cattle to the Surveyor or Parish-Officer forfeits 20 *l.* to be levied by Warrant of one Justice, by Distress and Sale, &c. and for Want thereof to be sent to the Gaol till paid; one Moiety to the Repairs of the Highways, the other to the Informer: The Surveyor neglecting to deliver the Sum by him received to the Justice, forfeits 20 *l.* to be levied as aforesaid.

Any Person employ'd by a Carrier, or another, and subject to the Penalties of that Act, and driving or assisting to drive any travelling Waggon or Cart with more than six Horses, &c. shall forfeit 5 *l.* to be levied and disposed as aforesaid.

So much of that Act as relates to drawing up Hills with more than six Horses, &c. repealed.

And where six Horses, &c. are not sufficient to draw up-hill, or out of any foul Way, any Person may by Consent of the Owner or Driver, &c. add more Horses, &c. from any other Cart or Waggon on the Road.

This likewise was found impracticable, (*viz.*) to draw a Waggon with six Horses, and no more; and therefore by * another Statute the Drawing was to be as by the first Statute, 22 *Car.* 2. (*viz.*) not with above five Horses, &c. in Length, on the like Penalty as in the Act 6 & 7 *Annæ.*

* 1 Geo. 1. c.

10.

1 Geo. 1. c. 11.

And that the Exception in this, or in any other Act shall not extend to the Excepting the Carriage of threshed Corn, or Coal, &c.

5 Geo. 1. c. 13.

But now by the Statute 5 *Geo.* 1. c. 12. 'tis enacted, that after 24 June 1719, no Waggon travelling for Hire shall be drawn with more than six Horses, either in Lengths, Pairs or Side-ways, nor a Cart with more than three Horses; the Waggoner shall forfeit all the Horses above Six, and the Carter all the Horses above Three, with all Geers, Bridles, Halters and Accoutrements, to the sole Use and Benefit of any Person who shall seize the same.

The

The *Persons* seizing such Horses must deliver them to the *Constable*, or some Parish-Officer next the Place where the Seizure was made, who is to receive and take the same, till the *Seisor* shall upon Oath prove the Offence before a Justice, and then the Justice is to make a Precept to such a Parish Officer to deliver the Horses to the *Seisor*, paying such reasonable Charges for keeping the same, as the Justice shall allow.

If any Person shall, with Force, or otherwise, attempt to hinder the Seizing and Carrying away the Distress, or shall rescue the same, or use any Violence to the *Seisor*, he shall be committed by one Justice to the Common Gaol for three Months, there to remain without Bail, and shall also forfeit ten Pounds to be levied by a Warrant of one Justice; and if not paid within three Days after the Distress taken, then the Person distraining may sell it, rendring the Overplus, the Charge of Distraining and Selling being deducted.

After 29 September 1719, no travelling Waggon for Hire, having the *Wheels* bound with Streaks of a less Breadth than two Inches and an Half, when worn, or being set on with rose-headed Nails, shall be drawn with more than three Horses, under the Penalty of forfeiting all the Horses above three.

This Act doth not extend to Waggons or Carts employed about Husbandry or manuring Lands, and carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree or Piece of Timber, or any Stone or Block of Marble, Caravans, and cover'd Carriages of Noblemen or Gentlemen, or Timber, Ammunition or Artillery for the Service of the King.

If an Action shall be brought against any Person for putting this Act in Execution, he shall plead the General Issue, and give the Act, or any Special Matter in Evidence; and if he recover he shall have full Costs.

Note; This Act doth not repeal any of the former Acts, but 'tis to make them the more effectual, for repairing and amending the Highways.

6 Geo. 1. c. 6.

After 25 March 1720, no Person shall carry at any one Load in the Cities of *London* or *Westminster*, or within ten Miles thereof, in Waggons or Carts, having Wheels bound with Iron, more than twelve Sacks of Meal, each Sack containing five Bushels, and no more; nor more than twelve Quarters of Malt; nor more than Seven Hundred and an Half of Bricks; nor more than one Chaldron of Coals, upon Pain of forfeiting any one of the Horses, together with the Geers, Bridles and Halters therewith used, to any Person who shall seize or distrain the same, in such Manner, and to such Uses, as the Penalties and Forfeitures are directed to be levied and applied by an Act 5 Geo. c. 12.

The

The Precept of the Justice to deliver the Horse seized, for drawing with above six Horses, to the Seisor.

To the Constable, &c.

Berks, to **W** Hereas on the Day of the Date hereof, it was wit, duly proved before me, upon the Oath of W. R. of the Parish of, &c. that a Waggon travelling in the Road for Hire, on the second Day of July last past, in the Parish of, &c. aforesaid, and not employ'd in Husbandry, but loaded with Goods not excepted to be loaded by any Law whatsoever, was drawn with more than six Horses, contrary to the Statute in that Case made and provided; by Reason whereof, one Horse, being above six in the said Waggon, drawing it in Manner as aforesaid, with all Geers, Bridles, Halters and Accoutrements, were then and there seized by the said W. R. as forfeited, and were delivered by him to the Constable of, &c. aforesaid, that being the next Parish where such Seizure was made: Now I do hereby command you the said Constable of, &c. forthwith to deliver the said Horse, and other the forfeited Things unto the said W. R. who first seized the same, to and for his sole Use and Benefit, paying unto the said Constable 2 s. for keeping and securing the same for two Days. Given under my Hand, &c.

A Warrant to levy 10 l. upon the Goods of the Person who obstructed the Seizure.

To the Constable, &c.

Berks, to **W** Hereas on the Day of the Date hereof, it was wit, duly proved before me, upon the Oath of W. R. of H. &c. That W. W. of L. in the County aforesaid, did on the 5th of June last past, in the Parish of L. aforesaid, with Force, endeavour to * hinder the said W. R. in seizing and carrying away one Horse, being above six Horses then and there drawing a Waggon travelling on the Road for Hire, contrary to the Statute in that Case made and provided, by reason whereof the said Horse, with Geers, Bridles, Halters and Accoutrements were forfeited to the said W. R. who first endeavoured to seize the same; but was hindered by the said

* Or rescue it in using Violence to the Seisor, as the Case is.

Highways.

W. W. as aforesaid: These are therefore to require you forthwith to levy the Sum of ten Pounds upon the Goods and Chattels of the said W. W. by Distress and Sale thereof, in Case the said Sum of ten Pounds be not paid to you within three Days next after such Distress is taken, and that you render the Overplus to the Owner, the Charge of distraining and selling the said Goods being first deducted. Given, &c.

Besides the Payment of these ten Pounds, he must likewise be committed for three Months.

The Form of the Mittimus.

To the Constable, &c. and to the Keeper of the Common Gaol, &c.

5 Geo. 1. c. 12. Berks, to **R** Ecite the Warrant before-mentioned, till you wit, come to, These are therefore to require you to apprehend the said W. W. and to convey him to the common Gaol at R. for the said County, and to deliver him to the Keeper thereof, who is hereby required to receive the Body of the said W. W. and to keep him in the said Gaol without Bail for the Space of three Months next ensuing. Given, &c.

A Warrant to levy 5 *l.* on the Surveyor for misapplying, &c. the Money by him received.

To the Constable of, &c.

1 Geo. 1. c. 52. Suffolk, to **W** Hereas at a Special Sessions holden at L. Prosecution must be in six Months after the Offence. wit, on the 5th Day of May last past, for the Amendment of the Highways in the said County, it appeared to us, that the Sum of 50 *l.* was duly levied by C. D. Surveyor of the Highways in the Parish of L. on the Goods and Chattels of S. E. of the same Place, for leaving the Earth of a Ditch newly scoured in the Highway of the said Parish, by the Space of eight Days, after he had due Notice by the said C. D. to remove and carry away the same, Part of which Sum ought to have been applied by the said C. D. towards the Mending the said Highway: And whereas at the same Sessions it was duly proved before us S. E. and T. M. Esqs. two of his Majesty's Justices of the Peace for the said County,

County, and before whom the said Sessions was held, by the Oath of R. R. of, &c. that 25 l. being one Moiety of the said Sum of 50 l. was misapplied by the said C. D. by reason whereof he hath forfeited 5 l. pursuant to the Statute in that Case made and provided: These are therefore to require you forthwith to levy the said Sum of 5 l. on the Goods and Chattels of the said C. D. by Distress and Sale thereof, rendering to him the Overplus, and that you pay the same unto the aforesaid R. R. who gave us Information thereof. Given under our Hands and Seals, &c.

A Warrant to levy the Penalty of 2 s. 6 d. per Yard, for not scouring Ditches.

To the Constable, &c. and to the Surveyors of the Highways of, &c.

Surrey, to **W** Hereas at a Special Sessions holden at L. on wit, the 6th Day of August last, for the Amendment of the Highways in the Hundred of, &c. in the said County, it was duly proved before us, that R. R. of, &c. ought to scour * and keep open a Ditch, in Length one hundred Yards, near the Highways in L. aforesaid; And it was then likewise duly proved before us in the said Sessions, upon the Oath of C. D. Surveyor of the said Highways, in the Parish of L. aforesaid, that he gave the said R. R. due Notice to scour and keep open the said Ditch, but that he neglected to do the same, by the Space of thirty Days next after such Notice as aforesaid, by Reason whereof he hath forfeited Two Shillings and Six Pence for every eight Yards of Ditching, of the said hundred Yards, not scoured and kept open as aforesaid, the Whole amounting to One Pound eleven Shillings and Three Pence: We therefore require you forthwith to levy the said Sum of One Pound Eleven Shillings and Three Pence, on the Goods and Chattels of the said R. R. rendering to him the Overplus, and that you apply the said Sum to and for the Amendment of the Highways in the Parish of L. aforesaid. Given, &c.

1 Geo. 1. c. 52. Prosecution in six Months, no Appeal.

* Or to scour or mend a Water-course, or remove an Annoyance, as the Case is.

A Warrant to levy the 5 *l.* for drawing with more than six Horses *at Length*.

To the Constable, &c.

1 Geo. 1. c. 11.
6 Ann. c. 25.

* The like
Warrant a-
gainst any one
for driving, or
assisting to
drive, 9 A.
cap. 18.
† Corn and
Coals are not
excepted.

1 Geo. 1. c. 10.

|| 6 A. c. 29.

5 Geo. 1. c. 12.

Surrey, to **W** Hereas it hath been duly proved before me
wit, S. E. Esq; one of his Majesty's Justices of
the Peace for the said County, that W. R. of L. in the Coun-
ty aforesaid, * Waggoner, did on the 5th Day of August
last past, travel in the Parish of L. in the County aforesaid,
with one Waggon not employed in Husbandry, but loaded with
Goods † not excepted to be loaded by any Law whatsoever,
and drawn in the Common Highway there with more than
six Horses at Length, contrary to the Statute in that Case
made and provided, by reason whereof he hath forfeited
|| 5 *l.* These are therefore to require you forthwith to levy
the said Sum of 5 *l.* by Distress of all or any of the said
Horses; and if the said 5 *l.* is not paid within three Days
after such Distress taken, that then you sell the said Horses
for the Money you can get, rendering to the said W. R. the
Overplus after the Charges of distraining and keeping them
shall be deducted, and that you pay one Moiety thereof to
T. R. the Surveyor of the Highways in the said Parish of
L. where the Offence was committed, to repair the same,
and the other Moiety to T. K. of, &c. who first discovered
and prosecuted the said W. R. for the said Offence. Given,
&c.

A Warrant to sell the Horses which are
seized by any Person whatsoever, to
levy the 5 *l.* if not paid within three
Days.

To the Constable, &c. and to the Surveyor of the Highways,
in the Parish of, &c.

9 A. c. 13.

1 Geo. 1. c. 11.

Surrey, to **W** Hereas T. L. of L. &c. did, on the 7th
Day of August last past, seize two Horses
drawing a Waggon with five more Horses in Length, in the
Parish of L. aforesaid; which Waggon was not employed
about Husbandry, but was then and there loaden with Goods
not excepted to be loaded by any Law or Statute whatsoever,
by reason whereof the Owner of the said Waggon hath for-
feited 5 *l.* pursuant to the Statute in that Case made and pro-
vided;

vided; and the Horses so seized, being forthwith delivered by the said T. L. unto B. R. of, &c. Surveyor of the Highways in the said Parish of, &c. the same were not redeemed, nor the 5 l. paid within three Days after the said Seizure, but is still unpaid: These are therefore to require you, or one of you, to sell the Horses so seized as aforesaid, for the best Price you can get for the same, rendring to the Owner the Overplus Money, if any such shall be, after the 5 l. and the Charges of distraining and keeping the said Horses shall be deducted, and that you deliver the said 5 l. to the next Justice, &c. to be [†] distributed as by Law is directed. Given, &c.

[†] 9 Ann. c. 18.
A Moiety to

the Scizor, the other to repair the Ways.

A Warrant to levy 20 l. on the Person seizing the Horses, and neglecting to bring them to the Surveyor, &c.

W Hereas R. L. &c. on the 7th Day of August last past, ^{9 Ann. c. 18.} meeting with a Waggon travelling in the Highway ^{5 Geo. 1. c. 10.} in the Parish of L. aforesaid, not employ'd about Husbandry, but loaded with Goods not excepted to be loaded by any Law, and drawn with more than six Horses in Length, did seize two of the said Horses, but did and doth neglect to deliver them to the Surveyor of the Highways, or some other Parish Officer of L. aforesaid, that being the Place where the Offence was committed, by reason of which Neglect he hath forfeited 20 l. according to the Statute in that Case made and provided: These are therefore to require you forthwith to levy the said Sum of * 20 l. on the Goods and Chattels of the said R. L. by Distress and Sale thereof, rendring to him the Overplus; and that you pay one Moiety thereof to W. W. who first informed thereof, and the other Moiety to R. R. the Surveyor of the Highways in the Parish of L. where the said Seizure was made, to repair the Highways. Given, &c.

* The like Penalty, if the Person who levied the Money doth not bring it to a Justice. If no Distress, then

to be committed till the 5 l. paid;

A Warrant against a Surveyor, or any other Parish Officer, to levy 20*l.* for neglecting to bring the 5*l.* by him received to the Justice, &c.

To the Constable, &c.

9 Ann. c. 18.
1 Geo. 1. c. 11.

Surrey, to **W** Hereas T. L. of L. &c. Surveyor of the
writ, Highways, having on the 7th Day of, &c.
seized two Horses drawing a Waggon on the Highway, not
employed about Husbandry, and loaded with Goods not excepted
by any Law to be drawn with more than six Horses, and by
Sale of the said Horses so seized did levy the Sum of 5*l.*
forfeited by the Owner of the said Waggon; but did and doth
neglect to bring and deliver the said Sum of 5*l.* so by him re-
ceived, to a Justice of the Peace, pursuant to the Statute in
that Case made and provided, by reason whereof he hath for-
feited 20*l.* These are therefore to require you forthwith to
levy the said Sum of 20*l.* on the Goods and Chattels, &c. as
in the former Warrant.

A Warrant against a Surveyor, for not
putting the Laws in Execution.

To the Constable, &c.

Suffex, to **W** Hereas it hath been duly proved before me
writ, R. B. Esq^r &c. That T. R. Surveyor of
the Highways of the Parish of H. in the said County, did, on
the 25th Day of August last, wilfully suffer a Waggon loaded
with Wares, and not employed in and about Husbandry, (ut
prius, as before) to be drawn in the common Highway, in the
said Parish of H. with seven Horses, and hath hitherto neg-
lected to put the Laws in Execution made for repairing the
Highways; by reason whereof he hath forfeited 5*l.* These
are therefore (ut prius).

See several Precedents touching Surveyors, *J. S.* 552,
553, &c. and *post*.

Turnpikes. See several Precedents touching Turnpikes, and
the Tolls thereof, *J. S.* 562, 563.

Statutes which
concern High-
ways and
Bridges in par-
ticular Places.

Bedford, 5 Annæ, 8 Annæ, 9 Annæ, 12 Annæ, 3 Geo. 6 Geo.
c. 25. 13 Geo. c. 17. and 1 Geo. 2. ff. 2. c. 10.

Berks, 12 Annæ, 4 Geo. 1. and 10 Geo. 2. ff. 2. c. 3, 7.
Bucks,

- Bucks, 13 *Geo. c. 31.*
 Bristol, 13 *Geo. c. 12.*
 Cambridge, 35 *Hen. 8. c. 15.* 15 *Car. 2. 4 & 5 W. & M. cap. 9.*
 Cardiff, 23 *Eliz. c. 11.*
 Carleon, 23 *Eliz. c. 11.* 39 *Eliz. c. 23.*
 Chepstow, 3 *Jac. 1. c. 23.*
 Chester, 37 *Hen. 8. c. 3.* 4 & 5 *Annæ.*
 Chichester, 18 *Eliz. c. 19.*
 Cumberland, 43 *Eliz. c. 16.*
 Dorset, 1 *M. c. 5.*
 Essex, 7 & 8 *Will. c. 9.* 1 *Annæ.*
 Gloucester, 9 & 10 *Will. c.* . and 13 *Geo. c. 11 & 13.*
 Hereford, 39 *Eliz. c. 24.*
 Hertford, 15 *Car. 2. c. 1.* 16 & 17 *Car. 2. c. 10.* 4 & 5 *W. & M. c. 9.* 5 *Annæ.* 6 *Geo. c. 25.* 13 *Geo. c. 32.*
 Huntingdon, 4 & 5 *W. & M. c. 9.* 9 *Annæ.* 12 *Annæ.* 13 *Geo. c. 32.* and 1 *Geo. 1. ff. 2. c. 4.*
 Iptwich, 13 *Eliz. c. 24.*
 Kent, 15 *Hen. 1. c. 5.* 26 *Hen. 8. c. 7.* 18 *Eliz. c. 10.* 27 *Eliz. c. 26.* 39 *Eliz. c. 19.* 8 *Annæ.* 11 *Annæ.* 6 *Geo. c. 26.* 1 *Geo. 2. ff. 2. c. 12.*
 Lancaster, 13 *Geo. c. 9 & 10.*
 London, 24 *Hen. 8. c. 11.* 25 *Hen. 8. c. 8.* 32 *Hen. 8. c. 17.* 34 *Hen. 8. c. 12.* 13 *Eliz. c. 23.* 23 *Eliz. c. 12.* 19 *Car. 2. c. 3.* 22 & 23 *Car. 2. c. 17.* 3 & 4 *W. & M. c. 12.*
 Middlesex, 10 *Annæ.* 11 *Annæ.* 12 *Annæ.* 1 *Geo. c. 37.* 3 *Geo. c.* . and 13 *Geo. c. 31.* and 1 *Geo. 2. ff. 2. cap. 6.*
 Newport, 23 *Eliz. c. 11.* 39 *Eliz. c. 23.*
 Norfolk, 27 *Eliz. c. 24.* 7 & 8 *Will. c. 26.* between Wy-
 mondham and Attleborough, 7 *Annæ.* 10 *Annæ.*
 Northampton, 8 *Annæ.*
 Oxford, 18 *Eliz. c. 20.*
 Rochester Bridge, 18 *Eliz. c. 17.* 27 *Eliz. c. 15.*
 Somerset, 1 *Mar. c. 5.*
 Southampton, 9 *Annæ.*
 Stafford, 12 *Annæ.* c. . 13 *Geo. c. 14.*
 Suffolk, 10 *Annæ.*
 Surrey, 39 *Eliz. c. 19.* 6 *Geo. c. 26.* 1 *Geo. 2. ff. 2.*
 Suffex, 15 *Hen. 8. c. 6.* 29 *Hen. 8. c. 7.* 39 *Eliz. c. 19.* 6 *Geo. c. 26.*
 Warwick, 13 *Geo. 1. c. 14 & 15.*
 Wilts, 5 *Annæ.* 12 *Annæ.* c. . 13 *Geo. c. 16.*
 Worcester, 12 *Annæ.* c. . 13 *Geo. c. 14 & 15.* 1 *Geo. 2. ff. 2. c. 11.*
 Yorkshire, (Beverly) 13 *Geo. 1. c. 4.*

The Acts for erecting Turnpikes are very numerous, several passing, (or the old ones continued) almost every Session of Parliament; which see in the *Statutes at Large* as published.

See also the Statute of 1 Geo. 2. ff. 2. c. 19. for punishing such as maliciously pull down or destroy Turnpikes for repairing Highways, &c. such being convicted by Oath of one Witness before two Justices, or in the Sessions, to be sent to the Common Gaol, or House of Correction, to be kept at hard Labour for three Months, and be publickly whipped at the next Market-Town, on the first Market-day, &c.

And Persons guilty of a second like Offence, or who shall maliciously break down any Lock, &c. for Navigation of any River, to be guilty of Felony, and transported for seven Years.

This Act to continue for five Years, and read at every Quarter-Sessions, Court-Leet, &c.

And 8 Geo. 2. c. 20. which makes it Felony to destroy Turnpikes erected by Act of Parliament.

And 13 Geo. 2. c. 18. 14 Geo. 2. c. 42. for setting up Engines to weigh Waggon, &c.

Concerning Indictments about Highways.

For not repairing.

UPON Not guilty pleaded, the Decay alone comes in Question; for if another Person ought to repair, it must be pleaded. *Pasch. 26 Car. 2. per Hale.*

Non reparare debet (he ought not to repair) is a bad Issue; but yet if found for the Defendant, and not who ought to repair, he shall be acquitted, tho' no Judgment can be given upon such a Verdict. *Sid. 140. King and Inhabitants of Yarton.*

Style 400.

A Prescription to repair *ratione tenuræ* (by reason of Tenure) is not good; because it ought to be by Custom, which is Local, *viz.* That in such a Place, there has been a Custom, Time out of Mind, &c. to repair. *Sid. 464.*

Latch 206.

One was indicted for not repairing, which he ought to do *ratione tenuræ* (by reason of Tenure) omitting the Word *sua* (his); and it was objected, That another might have the Lands, and therefore it was unreasonable to indict the Defendant; and this seemed to be a colourable Objection; but the Forms are both Ways, and in the later Indictments that Word is usually left out.

King and Fanshaw, 1 Vent. §31.

Syd. 464.

Where a Person by any Inclosure straitens a Highway on both Sides, though the Parish repaired it before, yet now he is obliged to maintain it at his own Charge; but if he abates the Inclosure, and leaves the Way open as it was before, then

then the Parish is to repair it again. *Cro. Car.* 366. 2 Sir Ed Duncomb's Case.
Saund. 160. *King and Stoughton.*

If Lands are exempted from repairing, &c. by a Grant of the King, made before the Statute 2 & 3 Ph. & M. yet that shall not be a good Discharge upon the Land. 3 *Mod.* 96. *Brett and Witchcot.*

A Highway is that which leads from one Market-Town to another, and is to be repaired of common Right by the Parish where the Decay is, unless some other Person is bound by Prescription or Custom; and therefore *reparare debet* (he ought to repair) generally, without shewing how, is not good.

But if the Defendant pleads *reparare non debet* (he ought not to repair), and 'tis so found, he shall be acquitted, tho' it doth not appear who should repair; and the Reason may be, because *de communi jure* (of common Right) the Parish is bound to repair their own Highways; and therefore they are never admitted to plead Not guilty, and give in Evidence, that another ought to repair by Prescription or Tenure; for if they would discharge themselves, they must plead it. *Sid.* 147. *King and Inhabitants of Yarton*
1 Vent. 256.
1 Mod. 112.
S. P.

A common Way is that which leads from a Village or Town to the Parish Church, or Field; 'tis also called a private Way, and is to be repaired by the Village or Hamlet, and sometimes by a private Person: If such Way be out of Repair, every Inhabitant may have an Action, but an Indictment will not lie.

But a Hamlet within a Parish cannot be charged generally to repair without Prescription, &c. *Style* 163.

All Nufances must be set forth to be in a Highway; for if 'tis alledged to be in a Horse-way, the Indictment will be quashed; and though a Nufance may be alledged *in via Regia* (in the King's Way), yet 'tis not good, if the Indictment doth not express where, or in what County. *Bull.* 205.

An Indictment for not working towards the Repairs, &c. setting forth, That six Days between such a Time were appointed by the Justices, and that the Defendant did not come on any of the said six Days; this is naught, for the Justices must assign particular Days, and not generally six Days between such Times. *Salk.* 357. *Queen and King.*

It must conclude *ad commune nocumentum ligeorum*, &c. (to the common Hurt of the Liege, &c.) if it is restrained by the Words *prope inhabitantium* (near Inhabitants) it will be quashed. *1 Roll. Rep.* 406. *1 Vent.* 26. For a Nufance.

On an Indictment, the Defendant must produce a Certificate, that the Nufance is removed, before he can take Exceptions to it; but a Presentment in such a Case may be quashed, without a Certificate, &c.

For

For putting a Laystall next a Highway, not good, without shewing from and to what Place the Way leadeth. *Roll. Abr. 2 Part, 81.*

Indictment for not repairing a ruinous House, standing on the Highway and likely to fall; and this was brought against a Tenant at Will, and alledged that he was bound to repair *ratione tenuræ* (by reason of Tenure): Adjudged, that it is an idle Allegation, for the Occupier is answerable to the Publick, who are to look to him, and not to what Estate he hath in the House.

The Inhabitants of C. being indicted for not repairing a common Foot-way, submitted to a Fine, and paid it; but this did not end the Matter, for *Writs of Distingas* shall be awarded *in infinitum* till 'tis repaired.

For stopping a Way.

If it is a Highway, there is no Necessity of setting forth the *Terminus de quo & ad quem* (the End from whence and to which), because such a Way leads from the Sea through the whole Kingdom; but if 'tis only a common Way, 'tis otherwise.

Latch 185.

It was the Opinion of my Lord Hale, That every Inhabitant of the Parish may have an Action upon the Case, for stopping the Way to the Church.

For stopping *quandam partem aquæ* (a certain Part of Water) it was quashed; for it should have been *terram aqua coopertam* (Land cover'd with Water). A Man was indicted for stopping *communem viam pedestrem ad Ecclesiam* de H. (a common Foot-way to the Church of H.) and it was held, if the Way had been alledged to be *pro Parochianis* (for the Parishioners), it had made the Indictment ill; for then the Nuisance would extend no farther than the Parish, and every Parishioner might have an Action; but it was laid *ad commune nocumentum* (to the common Harm), and in such Case, the Church shall be only intended the *Terminus ad quem* (the End to which).

Poph. 206.

'Tis not always necessary to alledge, that the Defendant stopped *Communem viam* (a common Way), for it may be a Way leading to a Church.

The Defendant pleaded, that he laid out a more commodious Way, and that before it was done he brought a Writ of *ad quod damnum*, &c. whether it would be a Damage if the King should give a License to stop up the old Way; and upon the Inquisition taken, it was found, that it was no Damage: This was held no good Plea, because he did not plead, that he had obtained the King's License; neither did he set forth by what Authority he laid out the Way; for 'tis but at his Pleasure, and he might stop it when he will.

If the Defendant before Verdict brings a Certificate, that the Way is repaired, then he may submit to a Fine; but after a Verdict such Certificate will not do, because the

Con-

Conviction being upon Record must be answer'd by Matter of as high a Nature, and that must be by a *Constat* to the Sheriff, who may return that it is amended. *Raym.* 215.

For stopping *quandam partem Regiæ Viæ apud H.* (a certain Part of the King's Way at H.) not good, without alledging how much in Breadth and Length. *Roll. Abr.* 2 Part, 81. but you must not say, *per æstimationem* (by Estimation), for that is uncertain.

A Presentment in a Leet for diverting a Way, is void ; because the Word (Divert) is not a Term proper and applicable to a Way, which may be *obstructed*, but cannot be *diverted*.

For stopping a Way *valde necessariam* (very necessary), for the Subjects, quashed, because it did not alledge it to be *Regiam viam* (the King's Way).

So for alledging it to be *ad nocumentum diverforum, &c.* (to the Hurt of divers, &c.) it should be of all the People.

The Information was for stopping, and the Evidence was that he plowed it, and held good.

In this Indictment, Notice was alledged, *die Dominica post Festum, &c.* (on the Lord's Day after the Feast, &c.) and did not say, *proxima* (next) which ought to be, by the Statute of 2 & 3 *Ph. & Mar.* and for that Reason it was quash'd. *Pascb.* 20 *Car.* 2.

If a Man hath eight Plough-Lands, though 'tis all Pasture, he ought to find eight Teams for six Days. *Raym.* 186.

In this Case the Statute charges the Occupier : The Indictment was, That the Defendant *habens tantam terram* (having so much Land), did not work : And it was objected, that the Defendant might have Lands, and not use them himself; and this was held material. But if the Defendant let his Lands lie unoccupied and waste, he is nevertheless liable.

4 Leon. 121.

Cro. Eliz. 148.
Sir Rowl. Heyward's Case.

1 Vent. 4.
Sir T. Griesly's Case.

For not working on the Highways.

2 Roll. Rep. 412.

A Warrant to levy the five Pounds for not taking upon him the Office of Surveyor.

Suffex, to wit, **W** Hereas it appeareth unto us, &c. That J. O. of H. in the said County, was on the fifteenth Day of January last past, lawfully nominated and appointed to be Surveyor of the Highways, in and for the said Parish for the Year next ensuing; and that within six Days after the said Nomination and Appointment, he had due Notice thereof : And whereas T. P. of H. aforesaid hath now made Oath before us, That the said J. O. hath * refused to take upon him the said Office, by Reason whereof he hath forfeited the Sum

Two Justices.

* Or neglected.

of

of five Pounds, one Moiety thereof to the said T. P. who hath informed us of the said Offence, and the other Moiety to go towards the Repairing the Highways: These are therefore to command you, that you forthwith levy the said Forfeiture of five Pounds by Distress and Sale of the Goods of the said J. O. rendering to him the Overplus, if any such shall happen to be, the necessary Charges of Distraining being first deducted: And hereof fail not. Given under our Hands and Seals the 20th of January, &c.

A Warrant against Constables, Tithingmen, &c. for not returning Lists of Names to Justices.

To the High Constable of the Rape of L. in the County of S.

Two Justices.
One Writrefs
upon Oath.

Suffex, to **W** Hereas the Constables, Headboroughs, Tithingmen, Church-wardens and Surveyors of the Highways of and in the Parish of H. in the County aforesaid, have neglected to make a List of the Names of a competent Number of Inhabitants of the said Parish, qualified by Law to take upon them the Office of Surveyor or Surveyors of the Highways in the said Parish for this present Year, or to return any such List to two or more Justices of the Peace, at a Special Sessions by them held for that Purpose on, &c. according to the Form of the Statute in that Case made and provided, by reason whereof every one of them so neglecting hath forfeited † Twenty Shillings, one Moiety thereof to the Informer, the other to go towards the Repairing the said Highways: These are therefore to command you, that forthwith you levy the several Sums of Twenty Shillings upon, &c. (as before).

† M. iety to the
Informer, the
other to amend
the Ways.

A Warrant against a Surveyor neglecting to view the Ways, and not present to a Justice what Condition they are in.

To the Constable, &c.

Two Justices. Suffex, to **W** Hereas it appeareth unto us, H. P. and wit, R. B. Esqs. two of his Majesty's, &c. That J. O. of, &c. being lawfully nominated and appointed Surveyor of the Highways in the Parish of, &c. for this present Year, hath neglected within * fourteen Days after his Acceptance of the said Office, to view the Ways, Water-courses, Bridges and Cause-

* Or from Time
to Time every
4 Months, as
the Case is.

*Causeways, which are to be repaired by the Parish of H. aforesaid, where he is Surveyor, and to present upon Oath to some Justice of the Peace in what Condition he found them, having for such his Neglect no reasonable Excuse allowed by two Justices of the Peace; so that he hath forfeited the same Sum of five * Pounds, according to the Statute in that Case made and provided: These are therefore, &c.*

* Moiety to the Informer, the other to amend the Ways.

A Warrant to reimburse a Surveyor, by charging him who ought to repair, and who neglected after Notice, &c.

Suffex, to wit, **W** Hereas it hath been duly proved before R. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That J. O. of, &c. ought to repair a certain Highway in, &c. as often as the same is in Decay: And whereas upon Oath made before me this present Day, by T. P. Surveyor of the Highways in and for the said Parish, that he having found a Default in the said Way, did the next Sunday afterwards, as soon as Sermon was ended, give publick Notice thereof in the Parish Church of, &c. and that the same was not amended within thirty Days after; whereupon the said T. P. did within thirty Days next following amend the said Default; and that the said J. O. who should have done the same, hath refused to pay the aforesaid T. P. the Charges thereof: These are therefore to will and require you forthwith, upon Sight hereof, to levy the Sum of * Twenty Shillings, by Distress and Sale of the Goods of the said J. O. and that you pay the same to the said T. P. which said Sum I think reasonable to be levied as aforesaid, in order to reimburse him the Charges laid out in amending the said Way: And hereof fail not. Given under my Hand and Seal, &c.

One Justice.

* 'Tis as the Justice shall think reasonable.

A Warrant against a Surveyor for not presenting the State of the Ways at the Special Sessions.

Suffex, to wit, **W** Hereas a Special Sessions was held by the Justices of the Peace for the County aforesaid, at, &c. on Monday the 23d Day of March last past, to which Sessions J. O. Surveyor of the Highways in the Parish of, &c. was duly summoned: And whereas it hath been duly proved before us H. P. and R. B. Esquires, two Justices of the Peace, &c. that the said J. O. did neglect to appear at the said

Two Justices, One Witness upon Oath.

* One Moiety
to the Inform-
mer, the other
to repair the
Ways.

said Sessions, and to present upon Oath the State of the Highways in the said Parish where he was Surveyor, or what Offences and Neglects any Persons were guilty of, relating to the same, by reason whereof he hath forfeited forty Shillings: These are therefore, &c.*

Against a Surveyor refusing to account.

To the Constable, &c.

Two Justices.
One Witness
upon Oath.

Suffex, to **W** Hereas it hath been duly proved before us wit, H. P. and R. B. Esquires, two of his Majesty's Justices of the Peace for the County aforesaid, That J. O. of, &c. Surveyor of the Highways in and for the said Parish, hath neglected to give an Account upon Oath at any Special Sessions, of all Money which hath come to his Hands, and which ought to be imploy'd in amending the Highways, and how he hath disposed thereof, so that for such his Neglect he hath forfeited the Sum of forty Shillings, one Moiety to the Informer, and the other to repair the Highways in the said Parish: These are therefore, &c.

Against a Surveyor refusing to deliver what remains in his Hands to the succeeding Surveyors.

To the Constable, &c.

Two Justices.
One Witness.

Suffex, to **W** Hereas T. P. of, &c. this Day made Oath before us, H. P. and B. R. Esquires, two of his Majesty's Justices of the Peace, &c. That J. O. now or late Surveyor of the Highways in and for the Parish of H. &c. hath refused to deliver to the next Surveyors of the Highways in the said Parish, what Monies remained in the Hands of the said J. O. which ought to be imploy'd in amending the said Ways, which said Money doth amount unto forty Shillings, by reason whereof he hath forfeited double the Value, one Moiety to the Informer, the other to amend the Highways in the said Parish: These are therefore, &c.

A Warrant

A Warrant against Persons neglecting to work on the Highways.

To the Surveyors of the Highways in the Parish of *H.*

Suffex, to **W** Hereas due Notice hath been given unto A. B. wit, T. P. J. O. and J. S. all of the Parish of *H.* aforesaid, Labourers, to work on the Highways in the said Parish on certain Days lately appointed for that Purpose, in order to amend the same: And whereas it appeareth unto me by the Oath of, &c. that they, and each of them, have neglected or refused so to do: There are therefore to require you forthwith to levy the respective Sums hereafter mentioned upon the respective Goods and Chattels of the said several Persons, by Distress and Sale thereof; that is to say,

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Upon the Goods of A. B. for neglecting two Days	0	3	0
Upon the Goods of T. B. for neglecting three Days	0	4	6

And that you employ the said Sums when levied, for and towards the Amending the Highways in the said Parish of *H.* And hereof fail not. Given under my Hand and Seal, &c.

A Warrant against a Person for laying Timber, Stones, &c. in the Highway.

To the Constable, &c.

Suffex, to **W** Hereas R. V. hath this Day made Oath before us T. P. and R. K. Esquires, two of his Majesty's Justices, &c. That J. O. of, &c. did within six Months last past lay Timber and Logs in the Highway leading from, &c. in the Parish of, &c. the said Way not being twenty Foot broad, so that the same was much obstructed, by reason whereof he hath forfeited five Shillings, one Moiety to the said R. V. who hath informed us of the said Offence, the other Moiety towards Amending the said Highways: These are therefore, &c.

Two Justices.
One Witness,
upon Oath.

The like Warrant against any Owner of Lands, who doth not cut down a Tree, Bush or Shrub in the Highway not twenty Foot broad, within ten Days after Notice given by the Surveyor.

An Indictment for not Repairing.

Sussex, to **T**HE Jurors, &c. That a Common Highway in the Parish of H. in the said County containing two Rods in Length, and one Rod in Breadth, on the 23^d Day of March in the ninth Year of the Reign, &c. was and still is in great Decay, for Default of due Repair and Amendment of the same; so that the Subjects of our said Lord the King, passing or travelling through or along that Way, cannot pass through the same, to the great Damage and common Nuisance of all the Liege Subjects of our said Lord the King, passing through that * Way; and that R. B. of H. aforesaid, Gent. ought by Reason of the Tenure of his Lands and Tenements adjoining near there, to repair and amend the said Highway, when, and so often as should be necessary, against the Peace of our said Sovereign Lord the now King, his Crown and Dignity.

* And that the Inhabitants of the Town of H. ought and have been accustomed by Right and ancient Custom, to repair and amend the said Highway, &c.

For incroaching and inclosing the Highway.

Sussex, to **T**HE Jurors, &c. That T. P. of H. in the said County, Yeoman, on the 12th Day of January in the ninth Year of the Reign, &c. with Force and Arms at H. aforesaid in the said County, did unlawfully and unjustly incroach and inclose a certain Part of a common Highway there, containing in Length forty Rods, and in Breadth seven Rods, being Part of the common Highway there, leading from a certain Place there called, &c. in H. aforesaid to, &c. with certain Hedges and Fences, and did unlawfully and unjustly continue the said Part of the Common Highway at H. aforesaid in the said County, as is before mentioned to be incroached and inclosed, from the said 12th Day of January in the same Year above mentioned, to the 25th Day of March in the said Year; and by Reason thereof the common Highway aforesaid was very much straitened and obstructed, to the great Damage and common Nuisance of all the Liege Subjects of our said Lord the now King, going, returning, passing, riding or travelling through or along the said common Highway, and against the Peace of our said Sovereign Lord the now King, his Crown and Dignity, &c.

In another Manner.

Suffex, to **T**HE Jurors, &c. That whereas from the 1 Lutw. 490.
 wit, Time whereof the Memory of Man is not to
 the contrary, it was used, that the liege Subjects of our said
 Lord the King had and lawfully used a certain common High-
 way at H. in the said County of Suffex, in a certain Place
 there, called, &c. leading from the Town of H. aforesaid, to
 the Borough of L. in the said County for themselves and their
 Chattels, without any Obstruction, or Hindrance by any Ditches,
 Hedges, or other Obstacles whatsoever; nevertheless one W. A.
 of H. aforesaid in the said County, on the 23d Day of March
 in the ninth Year of the Reign, &c. * hath dug and erected a
 Ditch and Quickset-Hedge at H. aforesaid, in the Place afore-
 said, upon the Common Highway, and still keeps the said
 Ditch and Quickset-Hedge, so dug and erected as aforesaid, to
 the great Obstruction and Hindrance of the liege Subjects of our
 said Lord the King, passing thro' the said Highway, against the
 Peace of our said Lord the King, his Crown and Dignity, &c.

* 'Tis not necessary to say, with Force and Arms, because
 he may be the Owner of the Land. Poph. 200. But it must
 conclude against the Peace, &c. Godb. 59.

For erecting of a Shed.

Suffex, to **T**HE Jurors, &c. That W. H. &c. on the
 wit, twenty-third Day of March in the ninth Year,
 &c. with Force and Arms, &c. hath made and erected, and
 caused to be made, erected and built a Shed at H. aforesaid in
 and upon the common Highway, and hath then and there ob-
 structed, incroached and inclosed with the said Shed, a cer-
 tain Part of the Highway aforesaid, containing in Length
 twelve Feet, and in Breadth eight Feet, and the said W. A.
 with Force and Arms, at the Parish aforesaid in the said
 County, hath continued the Part of the said Highway so ob-
 structed, incroached and inclosed by him the said W. A. as a-
 foresaid, from the said 23d Day of March in the same Year
 above mentioned, to the Day of the Taking of this Inquisition;
 that is to say, the 1st Day of May then next ensuing, to the
 great Damage and common Nuisance of all the Liege Subjects of
 our said Sovereign Lord the King, passing through the said com-
 mon Highway, and also against the Peace of our said Lord the
 King, his Crown and Dignity, &c.

An Indictment for a Nufance in the Highway.

Suffex. to **T**HE Jurors, &c. That R. O. of H. in the
 wit, said County, Butcher, on the 7th Day of Au-
 gust in the ninth Year of the Reign, &c. and on divers other
 Days and Times, as well before as afterwards, at H. afore-
 said in the said County, did put and lay in a certain Place there,
 near the publick Street called, &c. as also near several of the
 Mansion-houses of divers liege Subjects of our Lord the King
 there inhabiting, great Quantities of Dung, Intrails, and other
 Filth, by Reason whereof, and by the unwholsome Scents and
 Smells proceeding from thence, the Air there for the whole Time
 aforesaid was corrupted and infected, to the common Nufance of
 all the liege Subjects of our said Sovereign Lord the King, pas-
 sing thro' that Street and Way aforesaid, to the bad Example of
 all other Offenders in such Case, and also against the Peace of
 our said Lord the King, his Crown and Dignity, &c.

For laying Rubbish in the Highway.

Middx. to **T**HE Jurors, &c. That R. O. of H. in the
 wit, said County, Yeoman, on the 7th Day of Au-
 gust in the 9th Year of the Reign, &c. and on divers other
 Days and Times as well before as afterwards at H. aforesaid
 in the said County, did then and there unlawfully and injuriously
 place and lay, or cause to be placed and laid in a certain High-
 way there, five Cart-Loads of Dung and Rubbish, and did vo-
 luntarily suffer the same to remain there from the said 7th Day
 of August to the 7th Day of September next ensuing, by Rea-
 son whereof the said Highway for the whole Time aforesaid was
 straiten'd and obstructed, so that the Liege Subjects of our said
 Lord the King could not so freely pass and repass about their
 Business, thro' the said Common Highway there, as they ought
 and have been accustomed, to the common Nufance of all the
 Subjects of our said Lord the King, passing through the said
 common Highway there, to the bad Example of all other Of-
 fenders in such Case, and also against the Peace of our said
 Lord the King, his Crown and Dignity, &c.

Several

Several Precedents touching Turnpikes in Highways, viz.

An Appointment of a Receiver of Toll at a Turnpike.

At the general Quarter-Sessions of the Peace held at, &c. in and for the County of M. &c. on the—Day of, &c.

Middx. to **W**E whose Names are hereunto subscribed, and 8 Geo. 1.
 wit, Seals affixed, being Justices of the Peace for the said County of M. do, by Virtue of an Act of Parliament made and passed, &c. hereby appoint B. H. of, &c. Receiver and Collector of the Toll (for the Year ensuing) ordered to be paid for all Horses, Coaches, Waggon, Carts, Cattle, Sheep, &c. at the Turnpike erected on the Highway leading, &c. for Reparation of the said Way, being 1 d. for every Horse, 6 d. for every Coach, &c. And if any Person shall refuse to pay the said Toll, the said B. H. is hereby directed and appointed to distress any Horse, Coach, &c. and detain the same until the said Toll due for the same, and the Charge of the Distress be fully paid and satisfied. And the said Toll so from Time to Time received, be the said B. H. is to pay to, &c. Surveyor of the said Roads, and to account for the same to us, or some other Justices of the Peace of this County when thereunto required. Given, &c.

A Warrant to send one to the House of Correction for breaking down a Turnpike.

Middx. to **W**Hereas it hath been duly proved before us T. B. 1 Geo. 2.
 wit, and C. D. Esqs. two of his Majesty's Justices of the Peace for the County of Middlesex, &c. by the Oaths of E. D. and F. G. Labourers, That J. E. of, &c. Did on the 3d Day of this Instant April, wilfully, maliciously and violently cut, break down, and lay open the large bolted Gate belonging to the Turnpike erected in the Parish of, &c. and in the Highway leading from the said Parish (Town, &c.) towards, &c. so that Coaches, Carts, Horses, &c. might pass the said Turnpike without paying any Toll, in great Contempt of the several Acts of Parliament made for repairing the said Highway: These are therefore to command you to apprehend the said J. E. and convey him to the House of Correction at, &c. and to deliver him to the Keeper thereof: Hereby also requiring you the said Keeper to take the said J. E. into your Custody, and him safely

to keep at hard Labour for the Space of three Months; and also that you the said Keeper do on, &c. next deliver the said J. E. to the Constable of the Town of, &c. who is likewise hereby required to strip the said J. E. from the Waist upwards, and to whip or cause him to be whipped publicly in the Market-Place of the said Town, between the Hours of Eleven and One o' Clock of the aforesaid Day. Given, &c.

A Warrant for letting Horses pass through Grounds to avoid the Toll.

8 Geo. 1.

Middx. to **W** Hereas C. D. of, &c. was this Day legally
 wit, convicted by the Oaths of, &c. of driving (or
 permitting to pass) divers Horses through certain Grounds ad-
 joining to the Highway, leading from, &c. to, &c. to avoid
 Payment of the Toll due by the Statute made for erecting a
 Turnpike there, contrary to, and in Contempt of the said Statute:
 These are therefore in his Majesty's Name to require you to
 levy the Sum of 10s. on the said C. D. by Distress and Sale of
 his Goods, &c. for the said Offence. Given, &c.

An Adjudication of Justices when a Road is repaired by a Turnpike.

At the General Quarter-Sessions of the Peace held at, &c.
 on, &c.

8 Geo. 1.

Middx. to **W** Hereas the Justices of the Peace for this County
 wit, of Middlesex, have Power and Authority by
 an Act of Parliament made and passed, &c. to adjudge and de-
 termine when the Highways leading to, &c. are sufficiently re-
 paired and amended; whereupon the Tolls therefore appointed
 (on Payment of the Money borrowed on the Credit of the said
 Act, and the Charges of passing the same) are to cease: Now
 we the under-written Justices do by Virtue of the said Power,
 on Examination of the Premises, and on a due Certificate
 thereof, hereby adjudge, That the said Highways leading to,
 &c. are sufficiently repaired and amended as they ought to be,
 &c. and that the said Toll ought immediately to cease and de-
 termine on paying of the Money borrowed on the said Act.
 Given, &c.

By 7 Geo. 2. c. 9. 'Tis enacted, That if the Surveyors of
 the Highways on any View, which they are required by Law
 to make, of the Highways within their respective Parishes
 and Limits, shall after 24 June 1734. find any common
 Highway deep and sounderous, and the Hedge or Hedges
 adjoin-

adjoining to such Highway to be so high, as thereby to prevent the Benefit and Advantage, which such Highway would otherwise receive from the Sun and Winds, it shall be lawful for such Surveyors, and they are hereby required to make a Presentment of such Hedges, so annoying the common Highway, to the Justices of the Peace, living in or near the Division where the said Highway is, at their Special Sessions held for such Purposes; which Justices, or any two of them, are by the Act impowered, by Warrant under their Hands and Seals, to summon the Occupiers of the Lands adjoining to the Highways, whose Hedges are so presented, to appear at the next monthly or other publick Meeting of the Justices in or near the Division, to shew Cause, why such Hedges should not be new made or cut low; and in Case the Persons so summoned neglect to appear, or to send some Person duly authorised to appear for them, according to such Summons; or if it shall appear upon due Examination and Proof upon Oath before the said Justices, that such Way is deep and foundrous, and damaged by the Height of such adjoining Hedge or Hedges, the said Justices, or any two of them, are required to issue out a Precept, under their Hands and Seals, to the Surveyor or Surveyors of the Parish or Place where the Hedges so presented are situated, directing such Surveyors to give or leave Notice in Writing, at the Dwelling-house or usual Place of Abode of the Persons whose Hedges were so presented, that they are thereby required to new make or cut low the said Hedge or Hedges, within thirty Days after such Notice, (provided that such Notice be given between the last Day of *September* and the first Day of *February*,) and in Case of Refusal or Neglect so to do, the Surveyors are required to cause such Hedges to be new made or cut low, as they shall think reasonable, so as such Hedges be left at least three Foot high above the Bank.

Those Persons who shall refuse or neglect to new make or cut low such Hedge or Hedges, shall repay to the said Surveyors such reasonable Expences, as they shall have been put to on that Occasion; and in Case of Refusal or Neglect to repay such Expences, within fourteen Days after the same shall have been demanded, the Justices of the Peace, on Complaint thereof made to them, at their monthly or other publick Meeting in or near the Place of the Offence, on due Proof upon Oath of the Surveyor's Expence, are required to issue out a Precept or Warrant, under the Hands and Seals of them, or any two of them, to the Constable and Borsholders, or other proper Officer of the Hundred, Parish or Place where such Hedge is situated, requiring them to levy such Sum of Money as the Surveyor's Expences amount to, on the Goods of the Person so refusing to pay, rendering the Overplus, after Deduction of the necessary Charges.

Nothing in the Act is to alter the Laws relating to Timber-Trees growing in Hedges; and all Laws in Being for amending the Highways are to remain and continue as before the said Act.

By 14 Geo. 2. c. 42. 'tis enacted, that the Trustees appointed by the several Acts of Parliament for repairing Highways, may cause Cranes or Weighing Engines to be erected at any Turnpike, and cause all Carriages passing the Turnpike to be weighed, and take over and above the Toll 20 s. for every Hundred Weight such Carriage with the Loading shall weigh above 6000 Weight; and the Money so raised shall go towards mending the Highways.

Farmers or others may carry Goods in Wheel Carriages bound with Streaks, or Tire of any Breadth, from the 15th of April to the 29th of September.

The Collectors may levy the additional Duty by Distress and Sale of the Person's Goods refusing to pay the same; and if any Person attempts to hinder the Weighing, or the Seizing or Carrying away any Distress, as aforesaid, or use any Violence to the Persons concern'd, on Oath made thereof by one Witness before the next Justice, the Offender shall suffer three Months Imprisonment, and forfeit 10 l. to be levied by Distress of his Goods after three Days.

Carriages employed only about Husbandry, &c. (as in 5 Geo. 1. c. 12.) shall not be weighed, and the Act of 5 Geo. 1. c. 12. shall extend to all Waggons, &c. whether travelling for Hire or not; and all Offenders against these two Acts shall be liable for every Offence (being convicted on Oath within three Days before a Justice of the County, &c. where the Offence shall be committed, or the Offender shall be) to the respective Forfeitures and Seizures of 5 Geo. 1. for the Space of three Days after the Offence, as they would have been had they been seized in the Fact.

A Summons of a Person, to shew Cause why he should not new make or cut low his Hedges.

7 Geo. 2.

Suffex, to **W** Hereas it appears unto us A. B. and C. D. wit, two of his Majesty's Justices of the Peace, upon the Presentment of E. F. and G. H. Surveyors of the Highway of the Parish of, &c. that the Highway leading from to is become deep and foundrous, occasioned by the Hedges of J. K. of, &c. adjoining to the said Highway being so high, as to prevent the Benefit and Advantage which the said Highway would otherwise receive from the Sun and the Winds: These are therefore to require you the said J. K.

to appear before his Majesty's Justices of the Peace, at their next Monthly Meeting on &c. at, &c. to shew Cause why the said Hedges should not be new made or cut low, according to the late Act of Parliament in that Case made and provided. Given under our Hands and Seals, &c.

A Precept to give Notice to a Person to new make or cut low his Hedges.

To E. F. and G. H. Surveyors of the Highway of the Parish of, &c.

Suffex, to wit, Whereas it appears upon due Examination and Proof upon Oath before us, That the Highway leading from to is deep and sounderous, and damaged by the Height of the adjoining Hedges of J. K. of, &c. These are therefore to require you to give or leave Notice in Writing at the Dwelling-House of the said J. K. that he is thereby required to new make or cut low his Hedges, within thirty Days after the Delivery of such Notice, according to the late Act of Parliament in that Case made and provided; and in Case of his Refusal or Neglect so to do, you are hereby required to cause the said Hedges to be new made or cut low, leaving the same at least three Foot high above the Bank. Given under our Hands and Seals, &c. 7 Geo. 2.

A Warrant to levy the Sum of 20 s. for the Surveyors Expences in new making and cutting low the Hedges of, &c.

To the Constable and Borsholders, &c.

Suffex, to wit, Whereas Complaint hath been made to us A. B. and C. D. two of his Majesty's Justices of the Peace by E. F. and G. H. Surveyors of the Highway of the Parish of, &c. that J. K. of, &c. hath refused or neglected to new make or cut low his Hedges, pursuant to Notice given to him for that Purpose, by Virtue of a former Precept under our Hands and Seals; and that therefore they have done the same for him, conformable to the late Act of Parliament in that Case lately made and provided; and that in the doing thereof, they necessarily laid out and expended the Sum of 20 s. which he the said J. K. hath likewise refused or neglected to repay: These are therefore to require you forthwith to levy the said Sum of 20 s. on the Goods and Chattels of the said J. K. by Distress and Sale thereof, and that you pay the same to the said. 7 Geo. 2.

Holidays. Homicide.

said E. F. and G. H. rendering to him the said J. K. the Overplus (if any) after Deduction of the necessary Charges Given under our Hands and Seals, &c.

Holidays.

BY the Statute of 5 & 6 Ed. 6. c. 3. several Days are appointed to be kept holy; and among the rest, the Feast of St. *John Baptist* is one. A Man was presented in the Spiritual Court for carrying Hay on that Day, but had a Prohibition, because it was a Work of Necessity, being in Harvest time; and there is a *Proviso* in the Act, to except Persons working in Harvest, or upon Necessity.

Homicide.

MAnslaughter or Homicide, is the Killing of a Man upon a sudden Provocation without any Malice, and in the Heat of Blood.

By this Definition it appeareth, That in Manslaughter,

1. There must be no deliberate Act, but the Falling out must be sudden.
2. The Act must be unlawful; for if lawful, then 'tis Chance-medley; and it must be without an Intention of any personal Wrong; for if the Intent is ill, 'tis Murder.

What is a sudden Falling out. A sudden Falling out is, *viz.* If two Men fight, and one of them break his Sword, and a Stranger lends him another, with which he kills his Adversary; 'tis Manslaughter in both.

To fight, and part presently, meet and one is killed; this is a continual Affray, and therefore Manslaughter.

Malice between two; the Deceased challenges the other, who refused to meet, but said he should go to such a Place; the Deceased meets him, and was killed; Manslaughter. *H. P. C. 48.*

Entering a House with Force; those who are turned out of Possession come to set it on Fire; and one within shoots, and kills

kills another without Doors; 'tis Manslaughter, because the Entry was unlawful. *H P. C.* 56.

A Servant draws his Sword in Defence of his Master, and in the Affray the Master is killed, 'tis Manslaughter in the Servant. *Sid.* 254. *King and Nevill.*

A sudden Provocation, and Death ensuing, doth so far extenuate the Crime as to make it Manslaughter.

Sudden Provocation.

Boyley's Case, 2 Cro. 296. One Boy having beat another, he runs bloody as he was to his Father, and tells him of it; and he goes back near a Mile, and calling the Boy strikes him with a little Cudgel, of which Stroke he died; and held it was only Manslaughter.

As an Husband killing another committing Adultery with his Wife. *Raym.* 212.

A Prisoner in Execution of Debt escaping, and the Keeper coming to the Place where he is kills him either in Pursuit or resisting, 'tis Manslaughter. *1 Roll. Rep.* 189.

Unlawful Acts where Death ensues, are, *viz.* playing at Foils, * throwing Stones, shooting at Deer in another Man's Park, Forcible Entry, and Ejecting another, and such like, are unlawful; but without a malicious Intention to kill, and therefore Manslaughter.

Unlawful Acts. *Aleyne Rep 12.

Bailiffs coming to serve an Execution, and the Debtor shuts his Door, which they break open, and one is killed; 'tis Manslaughter, because the Breaking of the Door was unlawful.

The Offender has the Benefit of the Clergy the first Time, and forfeits his Goods and Chattels.

If a Man is in Execution for Debt, and escapes, and the Gaoler hearing where he is, attempts to take him, and he resisting is killed by the Gaoler, 'tis Manslaughter.

My Lord Rolle distinguishes where a Man is in Execution for Debt, and where he is only committed for Felony, and escapes; for in the first Case, he says, the Gaoler must go back as far as he can before he attempt any Violence upon the Party, otherwise if he kill him, it may amount to more than Manslaughter: But I think 'tis his Business to press forward, for otherwise he shall never retake his Prisoner.

1 Roll. Rep. 189.

Where a Man is found guilty of this Offence, he is seldom bailed 'till Clergy had; but Mr. Lisse was bailed, which you may see in Title *Appeal*; tho' it was denied to Mr. Keat in the same Term. *M.* 8 *W.*

Chance-medley, or per Infortunium.

THIS is where a Man is killed by another casually, when he is doing any Thing which is lawful, and without any Intent to hurt :

As shooting at a Bird, which is a lawful Act, and killing a Man; the Father or Master correcting a Son or Servant, and Death ensuing.

A House was building thirty Foot from any common Highway, and one of the Workmen being about to throw a Piece of Timber out of the House, called aloud, *Stand clear*; the Timber fell upon one of the Labourers, and killed him: This was held to be *per Infortunium* (by Misfortune), for he was doing nothing but what was lawful and usual to be done; and he could have no ill Intention, because he gave Notice what he was about to do: But if this had been in the Streets of London, it had been Manslaughter, because of the continual Passing of the People; for in such Case it shall be presumed, that his Intention was to do some Mischief.

In this Case the Special Matter must be found, that the Court may judge whether the Killing was *per Infortunium*; and therefore 'tis not sufficient to find it generally.

My Lord Coke tells us, there is no express Judgment in Chance-Medley; but the Offender forfeits his Goods, and hath a Pardon of Courtesy.

This was anciently by *Certiorari* out of Chancery to remove the Record; which being certified, the Lord Chancellor issues forth a Pardon: But now 'tis done by Certificate of the Judge or Justices, &c.

The Form of which Writ is thus :

The Way now is by the Certificate of the Judge, without a *Certiorari*.

BEcause we have been informed by the Record of our trusty and well-beloved Sir G. T. Knt. and Sir T. P. Knt. our Justices assigned to deliver the Gaol in the County of Suffex, That R. N. (taken and detained in the said Gaol for the Death of T. R. for which he hath been indicted,) did kill the said T. R. by Chance-Medley; wherefore the said R. N. is sent back to our Gaol aforesaid, there to expect our Grace, we being moved with Pity have pardoned the said R. N. his Offence against our Peace, which appertaineth to us, for the Death aforesaid; and do thereupon grant him our firm Peace; nevertheless so that he may stand right in our Court, if any one should be willing to complain against him for the Murder above-mentioned. In Witness, &c.

Homicide ex Necessitate.

1. **I**T must be by a proper and lawful Officer, as the Sheriff, and not by a Stranger ; for then 'tis Felony. In the Execution of the Offenders.
2. The Judgment must be given by one who had a proper Jurisdiction to try the Cause ; for if a Justice of Peace give Judgment in Treason, the Execution is Murder, both in him and in the Officer ; if in Trespass he give Judgment of Death, 'tis Felony in him, but not in the Officer.
3. The Execution must be pursuant to the Judgment. *See postea in Judgment.*

In Cases Criminal ; as if a Man indicted for Felony is killed by an Officer, whom he resists, having a Warrant to apprehend him. In Advance-ment of Justice.

Or if a Prisoner is killed by an Officer carrying him to Gaol, and endeavouring to escape after a Felony actually committed.

Or if a Prisoner is killed by a Gaoler, the Prisoner assaulting him.

For if a Felon by Resistance or Flight cannot be taken without killing, he who kills him must be acquitted without Forfeiture of Goods, because every Man is warranted by Law to apprehend him ; but then there must be a Felony actually done ; which Circumstance is not required where a Man hath a Warrant to take a Felon. 3 *Inst.* 221.

In Civil Cases.

Resisting an Officer, who hath any legal Process, and killed by him.

Upon Not guilty pleaded, the Special Matter must be given in Evidence ; and it being found for him, he is to be acquitted without Forfeiture or Pardon.

But in all these Cases the Necessity must be unavoidable, and there must not be any Colour of Malice.

Homicide is justifiable, and no Forfeiture :

As if I kill a Man who sets my House on Fire ; or a Thief who steals my Goods, or comes to rob me. In Defence of House or Goods.

If a Woman kill a Man that endeavoureth to ravish her :

But if I kill a Man claiming a Title to my House, and endeavouring to enter, 'tis Manslaughter.

This Homicide is excusable, but the Goods are forfeited. Se defendendo.

But then it must be done only upon an inevitable Necessity, and he must give back as far as he can without endangering his own Life.

And

And the mortal Wound must be given after the Party retires to the Wall; for if before, 'tis Manlaughter.

Casual Death.

THIS is when a Man is slain otherwise than by the Hands of another; as by a Fall from a Horse or Cart, &c.

'Tis the proper Office of a Coroner to inquire of such Death, which he is to do by Jury, &c.

Therefore cannot be claimed by Prescription.

Any Thing which is the Cause of such Death, is forfeited to the King, but not till found by Matter of Record; and this Forfeiture shall have Relation from the Time of the Stroke given; so that if the Owner sell the Goods after that Time, and before the Inquisition taken, the Property is not bound, but the King shall be intitled to it.

Deodand.

3 Inst. 57.

MY Lord Coke defines this to be, when any moveable Thing which is inanimate, or a Beast animate, causeth the untimely Death of a *Reasonable Creature*, without the Will, Offence or Fault of *himself*; but it must be on the Land and not on the Sea.

This being found by Inquisition, is forfeited to the King, as being *pretium Sanguinis* (the Price of Blood) to be distributed in Works of Charity, to appease the Wrath of God.

1 Salk. 220.

A Cart met a Waggon loaded, and endeavouring to avoid it, drove up a Bank and overturned, and threw the Man out of the Cart before the Wheels of the Waggon, which ran over him and killed him: At first it was doubted whether the Cart was forfeited; it was agreed, that the Waggon, Loading, and all the Horses, were Deodands; and at last it was held, That the Cart was likewise; for where a Horse threw a Man in a River, and the Stream carried him to the Wheel of a Mill, which killed him, both the Horse and Wheel were forfeited; but if he had been thrown from his Horse by the Violence of the Stream, the Horse had not been forfeited.

Deodand.
Raynt. 208.

If the Party slain *by a Fall* is under fourteen Years of Age, then a *Deodand* is due; but if he be killed by *an Ox or Horse, &c.* the Horse is no *Deodand*.

This seems to be a very nice Distinction in the old Books, that the Horse or Cart from which a Boy under 14 Years falls, should be a *Deodand*; and yet if he is killed by a Horse, and is under that Age, the Horse shall not be a *Deodand*. I do not find any Reason given by Justice Staundford, or any of them, for this Distinction, nor by my Lord Coke himself, who

who took it upon the Authority of the Old Writers; but probably this may be the Reason, *viz.* A Boy under fourteen may not have the Discretion to ride the Horse, and therefore may be the Occasion of his own Fall; and this seems to agree with the Definition above mentioned: However, the Law is otherwise now; and Justice *Tewissen* was of Opinion, That there was no more Reason for this Distinction, than for to cut off the first Joint of the Thumb of a Cut-purse, which was Law formerly, but now, 'tis not.

A Man ringing a Bell, was strangled with the Rope; it was a Question, Whether the Bell should be a *Deodand*, or not, because, as 'twas objected, it was fastened to the Freehold, and given to God before? There was no Judgment given; but two Judges were of Opinion, That it was not a *Deodand*.

1 *Levinz* 136. Two Men riding over the *Trent*, were drowned by the Violence of the Water; their Horses were not *Deodands*, because the Men were drowned by the Violence of the Stream, and not carried by their Horses out of Depth. 2 *Roll. Rep.* 33. 2 *Cro.* 483. *Poph.* 136.

Inquisition taken *super visum corporis* (upon View of the Body) found that a Wheel of a Forge moved to the Death of the Man, and the Court was moved to stay Process for the Seizing it, because it was Parcel of the Freehold, as are the Wheels of a Mill, or a Millstone, the Mill itself being a known Thing in the Law, and so are the material Parts of it; and therefore if one of the Millstones is taken out to dress, and the Mill is devised whilst the Stone is out, yet the Stone will pass as Part of the Mill; so the Process was stayed.

Omnia quæ movent ad mortem sunt Deodanda. Brañt. lib. 3. tract 2, cap. 5.

What moves to Death or kill'd the Dead,
Is *Deodand*, and forfeited.

And by this Rule formerly every Thing moving to Death was forfeited, as the Waggon, Loading and Horses, &c. but it is now constrained, so that if the Wheel runs over and kills a Person, if upon an Inquisition it be found, that the Wheel moved to Death, that only shall be forfeited.

Hops.

THE Collectors of the Duties on Hops may be sworn before Justices of Peace, for the due Execution of their Office, and they are to give a Certificate thereof.

Pickers

Sect. 18.

* One Moiety
to the Crown,
the other to
the Informer.

Pickers or Gatherers of Hops, or other Persons privately carrying away Hops from the Place of Growth, or from the Place where they shall be put, in order to be cured, bagged and weighed, shall forfeit * 5 s. per Pound; and in such Case the Officers may seize the Hops, and bring the Offender before a Justice of Peace; and if he is convicted of the Offence and doth not forthwith pay the Penalty, and no sufficient Distress can be had, then the Justice may commit him to the House of Correction, there to be whipt and kept to hard Labour for any Time not exceeding one Month: Any Person obstructing any Officer, or beating or abusing him, forfeits 5 l. and if no Distress can be taken, then to be committed as aforesaid.

The Warrant to levy the Penalty.

To the Constable, &c.

Surrey, to **W** Hereas it was on the Day of the Date hereof
writ, duly proved before me, That T. P. of, &c.
did on the 2d Day of September last past, privately carry
away two Pounds of Hops from, &c. that being the Place
where the said Hops were put, in Order to be cured, by Reason
whereof he hath forfeited 10 s. according to the Statute in
that Case made and provided. These are therefore to require
you to levy, &c.

6 Geo. 1. c. 21.
c. 25.

After 1 August 1720. Planters of Hops must give Notice of the precise Time of bagging, or casking, or weighing their Hops; and this must be under their Hands to the next Officer of Excise, and at least 24 Hours before they begin in the first Week, and 48 Hours before any other Time of bagging, &c. under the Pain of forfeiting 50 l. for every such Neglect of Notice.

Planters, &c. must keep just Scales and Weights, and permit the Officer, &c. to use them, and shall not have any false Weights; offending in each of these Particulars forfeits 20 l.

6 Geo. 2. c. 37.

Maliciously cutting Hop-binds growing on Poles is made Felony without Benefit of the Clergy. Continued by 10 Geo. 2. c. 32. §. 2.

Horses.

IN order to preserve the Breeding of strong Horses, a Law was made 32 H. 8. c. 13. prohibiting Persons to put Stone-Horses above two Years old, and under fifteen Hands high (every Hand being four Inches) into Forests or Commons where Mares are kept, upon Pain of forfeiting the Horse: After this Manner,

Breed of Horses.

Viz. The Horse must be brought to the next Pound by the Keeper of the Ground, Constable or Headborough of the next Parish, and must be measured by him in the Presence of three other sufficient Men; and if found under that Stature, he who seized him may take him to his own Use.

Refusing to measure, or be present at the Measuring, Forfeiture is 40 s. apiece for every Offence; one Moiety to the King, the other to the Prosecutor.

Justices in Sessions may hear and determine Offences against this Act, and Stewards in Leets may take Presentments only, but must certify them to the next Sessions, upon Pain of 40 s.

But this Statute doth not extend to the Fen-Grounds in *Ely*, nor to the Counties of *Cambridge*, *Huntingdon*, *Norhampton*, *Lincoln*, *Norfolk* and *Suffolk*; so that the Horses there kept are not under thirteen Hands; nor to the County of *Cornwal*. 8 El. c. 8. §. 2. 21 Jac. 1. c. 28. §. 12.

Scabbed or infected Horses shall not be put in common Fields, on Pain to forfeit 10 s. to the Lord of the Leet.

Seft. 9.

Next to Breeding Horses, Care was taken that they should not be exported; and therefore by an Act of 1 Ed. 6. c. 5. it was provided, That no Person should sell or convey, &c. any Horse, Mare, &c. out of *England*, without the King's License; the Forfeiture is of the Horse itself, and 40 l. more to be divided between the King and Prosecutor.

Exporting Horses.

The Justices had Power to hear and determine this Offence in their Sessions.

But now, by 22 Car. 2. c. 13. any Horse may be exported, paying 5 s. at the Custom-House.

Horses being often stoln, and sold in Stables, and in private Places, a Statute was made 2 & 3 Ph. & M. c. 7. to prevent that Mischief; it provides,

To prevent selling of Horses in a clandestine Manner.

That Owners of Fairs and Markets shall appoint a Toll-taker; and where that is not taken, a Book-keeper, who shall sit in the Fair from Ten in the Morning till Sun-set, or forfeits 40 s. for every Default.

He must enter into his Book the Names and Dwellings of the Buyer and Seller, the Colour and Mark of the Horse sold, or forfeit 40 s.

The

The Book in which the Entry is made, must be delivered a Day after the Fair to the Owner or Keeper of the Fair, who shall make a Note of the Number of Horses sold, and subscribe it on Pain of 40 *l*.

The Property of stolen Horses shall not be altered,

1. If not rid, or stand open in the Fair one Hour. This my Lord *Coke* tells us is in Affirmance of the Common Law.
2. All Parties to the Contract must be present with the Horse, and before the Book keeper.
3. Their Names must be enter'd in the Book, and their Dwellings, and the Colour and Mark of the Horse.

Justices in Sessions have Power to hear and determine Offences against this Law.

But Horse-stealing still increasing, by Reason the Thief could sell them in Fairs and Markets, pursuant to the afore-said Act, to Horse Coursers, and at a great Distance from the Owners; therefore to preserve the Property still in them, another Law was made, 31 *Eliz. c. 12*.

31 *Eliz. c. 12*.

1. That no Sale shall be made in Fairs, unless the Toll-taker or Keeper know the Seller, or unless he bring some credible Person who knoweth him.
2. The Names, Surnames, Mysteries and Dwellings of both of them, and the Price of the Horse sold, must be enter'd in the Book.
3. The Book-keeper must give the Buyer a Note of these Particulars subscribed by him, if required, paying 2*d*. for the same.
4. He who sells without being known to the Book-keeper, or without bringing a Voucher; and he who voucheth without knowing the Seller; and the Book-keeper making Entry without knowing either, forfeits each of them 5 *l*. one Moiety to the King, the other to the Prosecutor, and the Sale is void.

1 *Lut*.

Now though the Sale be in all Circumstances pursuant to this Act, yet the Property is not bound, if the right Owner claim within six Months after 'tis stoln; which he must do in this Manner.

If the Horse is found in a Town Corporate, then he must claim him before the Mayor, or chief Officer; if in the County at large, then before a Justice of the Peace.

The Proof must be by two Witnesses upon Oath, who must depose before such Mayor, or chief Officer, or Justice, within forty

forty Days after the Horse is found, that the Property is in the Person claiming, &c. and that the Horse was stolen from him within six Months next before the Claim.

Upon this Proof, the Party shall have his Horse, paying the Buyer what he shall depose he gave for the same.

Clergy taken away from Accessaries before and after the Fact.

Selling a Horse by a false Name maketh the Sale void.

Indictment against a Horse-stealer, and his Accessary after the Fact.

Suffex, to **T**HE Jurors, &c. That J. O. late of H. in the said County, Labourer, on the 25th Day of May in the 9th Year, &c. with Force and Arms at H. aforesaid in the said County, did feloniously take and lead away a certain Gelding of a black Colour, of the Price of ten Pounds, being the Goods and Chattels of one M. V. then and there found, against the Peace of our said Lord the now King, his Crown and Dignity; and that T. O. late of H. aforesaid in the said County, Labourer, knowing that the said J. O. at H. aforesaid had done and committed the said Felony in Manner and Form aforesaid, on the same Day and Year above mentioned, at H. aforesaid in the said County, did feloniously aid, comfort and receive him the said J. O. after the said Felony was so committed by him the said J. O. as aforesaid, against the Peace of our said Lord the King, his Crown and Dignity.

Houses, where they may be broke open. See Arrests, and Doors.

Houses of Habitation.

THESE are privileged by the Law in several Respects.

They are Castles for the Defence of the Inhabitants.

They protect the Persons of Men from any Arrests on Meine Process at the Suit of any Subject.

A House may be defended by Force against Thieves or Robbers; and if they are killed, 'tis not Felony.

But notwithstanding these Privileges, it may be broke open in these Cases following; the Person first signifying the Occasion

casion of his Coming, and requiring the Opening of the Doors, and being refused.

1. In Treason, Felony, or Suspicion thereof.
2. To apprehend any Person who hath dangerously wounded another, being freshly pursued.
3. An Affray being in a House, the Constable may break it open to keep the Peace.
4. Upon a Forcible Entry, or Detainer, found by an Inquisition.
5. To apprehend any Person upon a *Capias utlagatum*, or *Fine*, or upon Process of Excommunication, or upon a Warrant of the Peace, or Good Behaviour.
6. Upon a Recovery in a real Action, the Sheriff may break it open to deliver Possession.
7. And generally in any Case where the King is Party, or hath any Interest, for no Man's House shall protect him against the King.

6 Geo. I. c. 21. By an Act 7 *W.* several Duties were granted on Houses for a Term of Years, and by an Act 8 *Annæ*, Duties on Houses having twenty Windows, or more, were granted; which Duties by subsequent Acts have been made perpetual, 'tis now enacted, That after 1 *August* 1720. the Justices of the Peace, who are Commissioners of the said Duties, may, within their respective Limits, appoint two Persons, whom they shall think responsible, to be the Collectors within the Parishes, of the said Duties (whether their Names are presented by the preceding Collectors, or not); and if there shall be any Arrears of the said Duties, by Reason of the Failure of any such Collectors, for which the Parish is answerable, then two or more Justices, who are Commissioners for these Duties, may cause such Arrears to be raised within that Parish, on all such Houses as are liable to pay the Duties, and to cause the same to be raised; and for Default of Payment, to levy it by such Ways and Means as the Duties on Houses are to be raised, and to cause the Money so raised to be paid to the Receiver General of the said Duties, &c.

The Duty on Windows is charged on the Inhabitants, and was first granted for seven Years from 25 *March* 1696. by 7 & 8 *W.* 3. and every Dwelling-house inhabited was to pay 2 *s.* a Year, a House with ten Windows, and under twenty, to pay 4 *s.* above the 2 *s.* and with twenty Windows or more 8 *s.* above the 2 *s.* by half-yearly Payments; these Duties have been since increased and continued by several Acts of Parliament, and at length made perpetual by 3 *Geo. I. c. 8.* §. 17. and now twenty Windows is to pay 10 *s.* additional Duty, and thirty Windows 20 *s.*

See Buildings.

House

House of Correction.

MANY Laws have been made for punishing Beggars and idle Persons, but none to set them on Work, before 39 *Eliz. c. 4.* which gives the Justices in Sessions Authority in three Things:

1. To appoint the Houses of Correction to be built.
2. To make Orders for maintaining and governing them when built.
3. To see that the Offenders sent thither be set to work, or punished.

By Virtue of this Statute the Justices of Peace may increase the Number of Workhouses, if they find it necessary; but it must be at the Charge of the whole County; for the Statute is not expired, but it is continued by the Statute of 3 *Car. 1.* till it be otherwise ordained, and stands upon the same Foot with 43 *Eliz.* which is no otherwise continued.

My Lord *Coke* tells us, That for some Time after this Law was made, and until the Justices become remiss in their Duty, there was not a Rogue to be found in the Kingdom.

But the Justices taking no Care for the building or providing such Houses, and neglecting to put the Law in Execution; another Statute was made, 7 *Jac. 1. c. 4.*

That a House of Correction shall be built or provided in every County within a Time therein limited, with all Conveniencies to set Rogues and idle People to work, or every Justice shall forfeit 5 *l.* one Moiety to the Prosecutor, the other toward the Building the House.

Which House, when built or purchased, shall be convey'd to Persons appointed by Justices in Sessions, in Trust to be employ'd for the Keeping, Correcting and Setting to Work Persons sent thither.

He is to be appointed by the Justices in their Sessions; he is to set on Work, and immediately to correct Persons by whipping or fettering them, if unruly.

He is yearly to have such an Allowance as Justices in Sessions shall think fit, which is to be paid quarterly by the Treasurer of the County Stock; and in Default of such Payment, he may levy it upon the Treasurer by Distress and Sale of his Goods.

He is to give Account quarterly, at the Sessions, of all Persons who have been committed to his Custody; and if any escape without being discharged by due Course, the Justices in Sessions may fine him at Discretion; the Fine is to be paid to the Treasurer of the County Stock.

K k 2

Moved

Building a
House of Cor-
rection.

Master thereof

Moved to quash an Order of Sessions for removing the Keeper of the House of Correction; it being to discharge him for diverse and sundry Crimes, not specifying what Crimes in particular; and it was said that Place is not at the Will of the Justices neither by the Common Law nor by the Statute. *Per Curiam*, The Justices have Power to turn him out for Misbehaviour, but not arbitrarily; they ought to have specified the Cause in their Order: And it was therefore quash'd. *H. 1707. Queen and Apsley, 11 Mod. 165.*

The Justices shall meet twice in every Year to put this Act in Execution; and before their Meeting, shall by Warrant command Constables, &c. of every Hundred, Town and Hamlet, to make a general but private Search in one Night within their Precincts, to apprehend Rogues, Vagabonds and idle Persons, and to bring them before the Justices.

What required to be done by the Justices and Constables.

The Constables at that Meeting must give an Account in Writing upon Oath, and under the Minister's Hand, what Rogues have been taken in their Precincts, and how many punished, and conveyed to the House of Correction.

a Inst. 730.

A Constable neglecting in the Premises, as also at the Charge of the Hundred, safely to convey such Rogues, &c. with all other idle and disorderly Persons, as by the Justices Warrants shall be sent thither, (these Words my Lord Coke says, ought to be specially observed) may be fined at Discretion by Justices, so as it exceed not 40 s.

Who may be sent thither.

Alehouse-keeper selling Ale after Conviction.

Any Person running away, or threatening so to do, and to leave their Families to the Parish; but of this, two Witnesses must make Oath before two Justices. *7 Jac. 1. c. 4. §. 8.*

By 18 Eliz. 3. but not by 7 Jac. 1. c. 4. §. 7. if the discharge the Parish from keeping it.

Bastard-Child, the Mother thereof not able to keep it; but if a Woman is delivered there, it must be sent to the Place from whence she came. *2 Bulst. 338.*

Beggars sturdy.

Cheaters must be bound over to Sessions, and they may send them to the House of Correction.

Corn-spoilers.

Hedge-breakers.

Labourers under Thirty, and not having wherewith to live without working, and refusing.

But if they have Means to support themselves, and they are idle and disorderly, may be sent thither.

Orchard-Robbers.

Parents of poor Children, enticing them from their Masters.

Poor Children refusing to be put Apprentices.

Rogues

Rogues, whose Place of Birth or last Dwelling for a Year cannot be known, or refusing to tell the Place of Settlement.

Servants running away, or those who are idle and disorderly, or who are out of Service, and warned by two Justices to go to Service by a Day prefixed.

Trespassers common.

Vagabonds, and small Offenders. 6 Geo. 1. c. 19.

Wood-cutters.

And generally any Person whatsoever who lives in a profuse Manner, having no visible Estate to support himself; any such Person may be set to work there, but not whipt till convicted in Court; and may be continued there till he satisfies the Justice how he lives. King and Templest, Sid. 281.

But the Way of Conviction is not appointed in many of these Cases; therefore it must be in Sessions, and from thence the Commitment must be made; and in the mean Time the Justice may require Sureties for his Appearance there.

Upon the Presentment of the Grand Jury at the Assizes, the Justices of Peace may build and enlarge Houses of Correction, and make Rates for that Purpose. H. 13 Geo. c. 24. §. 2.

And by the same Statute, §. 33. Two Justices shall twice every Year examine into the Management of the Houses of Correction, and report to the Quarter-Sessions, who shall make Regulations, &c. Vide the Act at large, and Tit. Vagrants.

By 14 Geo. 2. c. 33. §. 2. The Justices at Quarter-Sessions where there shall be no Assizes, may build or enlarge Houses of Correction upon Presentment of the Grand Jury, and may purchase Land for that Purpose.

By 15 & 16 Geo. 2. c. 24. Where any Person liable by Law to be committed to the House of Correction, shall be apprehended within any City, Liberty or Town Corporate, whose Inhabitants are contributory to the Support and Maintenance of the House or Houses of Correction of the County, &c. in which such Liberty, City or Town Corporate is situate, the Justices of Peace of such Liberty, &c. may commit such Person to the House of Correction of the County, &c. in which such Liberty, &c. is situated, &c.

Mittimus of an idle and disorderly Person.

To the Keeper of the House, &c.

Suffex, to **I** Send you herewithal, J. O. of H. in the said
 wit, County, being an idle and disorderly * Person,
 (*If a Servant, then say), And and who will not employ himself, or be employed in any honest
 one who will Way to get a Livelihood: I therefore require you to receive the
 not stay in Ser- said J. O. into your Custody, and him safely to keep until he
 vice, shall be lawfully discharged; and in the mean Time to set
 him to Work, and to give him moderate Punishment by Whip-
 ping, allowing him also such Maintenance as he shall deserve
 by his Labour; and that you bring the said J. O. to the next
 Quarter-Sessions, &c. together with this Warrant. And
 hereof sail not, &c.

For one taken by the Watch.

To the Keeper, &c.

Suffex, to **W** Hereas J. O. was brought before me this
 wit, present Day, by R. K. Constable of, &c.
 being taken last Night by his Watch, and is charged with wan-
 dring abroad, and other idle, lewd and disorderly Behaviour
 and Course of Life, contrary to the Laws: These are there-
 fore to require you to take the said J. O. into your Custody, and
 him safely to keep until he shall be delivered by due Course of
 Law; and in the mean Time to set him to Work, and to give
 him such Punishment and Maintenance as by Law is required;
 and that you bring the said J. O. to the next Quarter-Sessions
 to be holden, &c. together with this Warrant, &c.

Hue and Cry.

13 Ed. 1.
27 Eliz.

THIS is a Pursuit of any Person after a Felony com-
 mitted, and flying for the same.

'Tis to be made from Town to Town, and from County
 to County, by Horsemen and Footmen; and of this there
 are two Sorts:

3 Inst. 116.
2 Hal. H. P. C.
162, 103.

1. Hue and Cry by the Common Law; which is, where
 a Felony is committed, or any Person wounded, the Party
 grieved, or any other in his Behalf, may resort to the Con-
 stable

stable of the next Town, and acquaint him therewithal, describing the Party, and telling him the Way he is gone; who thereupon is to raise the Town, and to give the next Constable Notice, and he the next, and so on to the Sea-side; and this my Lord Coke says was the Law before the Conquest.

And those who neglect to make Hue and Cry, or do not pursue it when made, shall be fined and imprisoned by the Sessions.

2. Hue and Cry by Force of Statutes are many; but chiefly upon the Statutes of Robberies.

As by the Statute of *Winton*, the whole Hundred is made liable in which a Robbery is committed; but now by 27 *Eliz. c. 13* the Inhabitants of any Hundred where Hue and Cry is made, and if they shall neglect to pursue, must answer one Moiety of such Damages which shall be recovered against the other Hundred.

This Statute of *Ed. 1.* extends only to Robberies done to the Person, for it was made for the Safety of Travellers; and therefore if a House should be robbed in the Day-time, and the Felons escape, and Hue and Cry is made, and they are not taken, the Hundred shall not be answerable for the Reason above-mentioned. Cro. Eliz. 753.
Moor 620.

The Person robbed should give Notice as soon as he can. Noy 155.

He usually goes to a Justice of Peace, and is examined after this Manner.

The Examination of *R. K.* of, &c. taken upon Oath before *R. B.* Esq; one of his Majesty's Justices of the Peace for the County of, &c. on the 25th Day of *May* 1724.

THIS Examinant saith, That on Tuesday the 19th Day of this Instant May, he was assaulted in the Highway leading from, &c. at or near the Place called, &c. about Ten of the Clock in the Morning of the same Day, by three Men on Horseback, who seized this Examinant, and carried him out of the Road to a By-place adjoining, and robbed him of, &c. And further saith, That he is since informed, that the said Highway and By-place are both in the Parish of *H.* and within the Hundred of, &c. in the said County; and that he did not then, nor yet doth know either of the Persons who committed the said Robbery.

A Warrant for a Hue and Cry.

To all Constables, Headboroughs and other Officers, as well in the said County of *Suffex*, as others, to whom the Execution hereof shall belong.

Suffex, to **W** Hereas I am credibly informed, That three Persons [here describe their Age, Colour, Apparel, Horses, &c.] did on the 19th Day of this Instant May assault and take from R. K. of, &c. ten Pounds, &c. and that they are since fled for the same, and not yet apprehended: These are therefore to command you forthwith to make diligent Search within your Precincts for the said Persons, and to make Hue and Cry after them from Town to Town, and from County to County, and that as well by Horsemen as Footmen, according to Law; and that if you shall find them, or either of them, that then you bring them before some one of his Majesty's Justices of the Peace for the County where he or they shall be taken, to be dealt withal according to Law. And hereof fail not, &c.

Hue and Cry raised without Cause is a Breach of the Peace; but 'tis a Justification for seizing the Persons pursued.

And if it be made falsely, and the Person enter into a House, tho' with a Constable, and bind and rob the Master in the Night, 'tis Burglary.

2 Salk. 613.
Ascomb against the Hundred of Spelholm, S. C. but varies in stating it.

The Servant was robbed, and the Master brought the Action, and the Jury found, that he was a Quaker, and would not take the Oath required by the Statute, *whether he did know any of the Robbers*; adjudged, that the Master may bring the Action, and that the Oath of the Servant is sufficient, especially if he was robbed not in the Presence of his Master; but if robbed in his Presence, then the Master must make Oath; which being this Case, and the Quaker refusing to make Oath, the Hundred is not liable, for the Statute 27 Eliz. was made in Favour of the Hundred to prevent Combination between the Robbed and Robbers.

2 Salk. 614.
Combs against the Hundred of Bradley.
4 Mod. 303.
S. C.

The Servant sued the Hundred for a Robbery of his Master's Goods, and declared, that he was possessed of them *ut de bonis suis propriis* (as of his own proper Goods); the Jury found, that the Plaintiff was a Servant and robbed of 20*l.* of his Master's Money, and 20*s.* of his own Money: Adjudged, that the Action is well brought by the Servant, for by the Possession he is intitled to the Money *ut de bonis suis propriis* against all Men but him who hath the very Right.

A Man was set upon in one Hundred, and carried into another Hundred, and there robbed; adjudged, that the last Hundred shall be only charged, because there the Robbery was committed, and not before: Now upon the Statute of Hue and Cry the Hundred is liable for not taking the Robbers; but their Taking the Goods shall not relate to the first Assault, so as to make it a Robbery *ab initio* (from the Beginning), because the Assault was not the necessary Cause of the Robbery, as a Stroke is of a Murder; for a Man may be assaulted in one Hundred, and carried *into an House* in another Hundred, and there robbed; or he may be assaulted in the Day-time in one Hundred, and carried into another, and there robbed in the *Night-time*; in which Cases there is no Remedy by the Statute; but 'tis not necessary to charge the Hundred that the Robbery should be committed on the Highway.

Cowper against the Hundred of Basingstoke, Salk. 614.

After a Verdict against the Hundred upon the Statute, it was moved in Arrest of Judgment, that it did not appear that the Oath was made before a Justice of Peace living within the Hundred, but within the County, which was not pursuant to the Statute 27 *Eliz.* for that requires the Oath to be made before a Justice of Peace living within the Hundred, &c. but adjudged, that this is not required by the Statute of *Winton*, and that the Statute 27 *Eliz.* is only directory; and that the Declaration had been good, though it had not been set forth, that any Oath was taken before a Justice of Peace.

2 Salk. 614.

Dowley against the Hundred of Odium.

Upon Notice of a Robbery, pursuant to 8 *Geo. 2. c. 16.* with the utmost Expedition fresh Suit and Hue and Cry is to be made after the Felons; and the Constable, &c. refusing or neglecting forfeits 5 *l.* which Act see before, Title Constable.

Hundred.

TO charge the Hundred with a Robbery, these Things must be done:

1. The Person robbed must with all convenient Speed give Notice of the Robbery to some Inhabitant near the Place where he was robbed. Noy 155.
2. He must be examined upon Oath within twenty Days next before he brings his Action, by one Justice dwelling near the Hundred where the Robbery was done, whether he knew the Robbers, or either of them; and if he did know

know them, then he shall be bound before the Justice to prosecute them.

3. The Hundred is not chargeable if any of the Offenders are taken, though after the twenty Days limited by the Statute of 28 Ed. 3. c. 11 for the Taking them. *Sid. 11.* But if not taken within forty Days after the Robbery, then the Hundred must answer the Loss.

4. The Action must be brought within a Year after the Robbery done.

3 Geo. 2. c. 16.

After Recovery and Execution of Damages it may be levied on one Person; but then upon Complaint, &c. two Justices of the Hundred, *Quorum unus*, &c. may tax in Proportion the Town, Villages, Parishes and Hamlets of the said Hundred, to make an equal Contribution to relieve the Persons against whom the Execution was taken.

After such Taxation, the Constables and Headboroughs of every Parish of the said Hundred shall assess the Inhabitants according to their Abilities, to pay the Sum taxed or laid by the Justices upon their respective Parishes.

Constables, upon Refusal of any Inhabitant to pay the Assessment, may distrain and sell, rendring the Overplus; and after it is levied, shall within ten Days deliver it to the Justice or one of them, and the Justices must pay it to the proper Persons.

Like Taxation for a Contribution of a Moiety out of a Hundred where any Default was in Pursuit, &c. to reimburse the Hundred where the Robbery was done.

And tho' no Man ought to travel on a Sunday; yet if he doth, and is robb'd, the Hundred shall be charged.

In order to bring the Action, the Person must make an Oath as followeth:

This must be within twenty Days before the Action brought, or else it will not lie.

Suffex, to wit, **R.** B. of C. in the said County, Gentleman, came before me H. P. Esq; one of his Majesty's Justices of the Peace, &c. the Day and Year above-written, and made Oath, that on Monday the, &c. about eight of the Clock, &c. travelling from, &c. he was assaulted in the Common Road, three Miles from, &c. in a Field, by three Horsemen, one of them being a Man of about twenty five Years of Age, &c. [describing also their Habits and Hories, &c.] which said three Persons then robbed this Deponent, taking from him by Force 20l. and a Mare; and the said R. B. did farther depose, that he doth not know the said Persons, or either of them.

R. B.

Sworn the 12th Day of July 1736.
before me

H. P.

A War.

A Warrant to assess and levy the Money for a Contribution, being recovered against the Hundred, and levied on two Men.

To the High Constable of the Hundred of L. and to all Petty Constables and Headboroughs of the said Hundred.

Suffex, to **W** Hereas R. B. of, &c. was lately robbed of
wit, 20 l. in the said Hundred of L. and hath
 since obtained a Judgment at Law against the Inhabitants
 thereof; which said Sum of 20 l. hath been levied and charged
 only upon J. S. and T. P. two of the Inhabitants of H. with-
 in the said Hundred, who have now made Complaint to us
 thereof: And whereas we have set a Rate upon the Parishes
 and Villages within the said Hundred for the raising the said
 Money, pursuant to the Statute in that Case made and provi-
 ded; which said Rate is hereunto annexed: These are there-
 fore to require you the said High Constable forthwith to give
 Notice thereof to the Petty Constables and Headboroughs, im-
 mediately after such Notice, equally to set or impose upon the
 several Inhabitants of the said Parishes, the respective Sums
 thereon rated, according to their Method of Rating for the Poor
 of the said Parishes, and afterwards to demand the same,
 and to levy it by Distress and Sale of the Goods of such of the
 said Inhabitants respectively, who shall refuse to pay the Sum
 on him or them set or imposed; and having received and levied
 the same, and that you do forthwith pay it unto us, or one of
 us, that the said J. S. and T. P. may be reimbursed: And
 you are further required to give an Account unto us, within ten
 Days next after the Date hereof, what you shall have done in
 the Premises: And hereof fail not. Given under our Hands
 and Seals, &c.

The Form of the Rate.

Suffex, to **A** Rate made by R. B. and G. G. Esqs. two of
wit, his Majesty's Justices of the Peace for the Coun-
 ty of Suffex, for the Raising of 50 l. on the Rape of L. which
 said Rape is charged with the said Sum which hath been levied
 upon A. S. and W. N. two of the Inhabitants thereof, by Vir-
 tue of a Judgment had and obtained by R. S. against the said
 Rape, for a Robbery done and committed therein.

The

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The Parish of <i>H.</i>	05	00	00
The Parish of <i>B.</i>	06	00	00
The Parish of <i>R.</i>	08	00	00
The Parish of <i>O.</i>	10	00	00
The Parish of <i>N.</i>	07	00	00
The Parish of <i>L.</i>	10	00	00
The Parish of <i>T.</i>	04	00	00

All which Parishes are within the Rape of L. aforesaid.

* It must be commenced within a Year and a Day after the Robbery done.

The * Action against the Hundred must always be by *Writ*, and not by *Bill*, because 'tis brought against the Inhabitants of a whole Hundred; who by reason of their Number cannot be *in Custodia Marechalli, &c.* (in the Custody of the Marshal, &c.)

And it is not material in what Parish the Robbery is done, so 'tis done in the Hundred against which the Action is brought; but the Parish must be alledged in the Declaration.

Neither is it material, whether 'tis done after Sun-setting, or before; for the Hundred is chargeable if the Robbery is committed during Day-light, which is a convenient Time for People to travel. 7 *Rep.*

Two Hundreds.

If Robbers seize a Horse in one Hundred laden with Money, and they lead him into another Hundred and take away the Money, there the first Hundred is chargeable, because the first Seizing was a Robbery; but if the Owner himself had led the Horse into another Hundred, then that Hundred where the Money was actually taken had been liable, because till then it was in his Possession.

And therefore it has been adjudged, that if a Man is set upon in one Hundred, and carried into another and there robbed, that Hundred is liable, because the Money was not out of his Possession in the Hundred where he was seized. *Goldf.* 86.

The same Law if a Man is assaulted in one Hundred and pursued to another, and there robb'd. *Hut.* 125.

And the Reason is, because the first Hundred is not bound to pursue for an *Affault*, but for a *Robbery*; and the second Hundred is chargeable, not because they did not prevent the Robbery, but because they did not take the Robbers within forty Days; therefore they are bound to pursue where the Fact was committed, and shall be liable if they do not take them within that Time.

If Goods are sent by a Carrier who is robbed, he must make Oath, and not the Owner. 1 *Leon.* 323.

A Servant deliver'd his Master's Money to a Quaker to carry Home; they were both robb'd, and the Servant made Oath,

Who must make Oath.

Ascomb and the Hundred of Spelholm.

Oath, but the Quaker refused, and the Master brought the Action: It was adjudged ill, as to the Money of which the Quaker was robb'd, but the Servant alone might have maintained the Action.

So if the Servant be robbed, the Master, though absent, may bring the Action. 1 Cro. 26. 2 Roll. Abr. 686. But in this Case the Servant must make Oath, &c. and the Master may be a Witness at the Trial, to prove the Delivery of the Money or Goods to the Servant, tho' in his own Case. Note; This was against the Opinion of Rolle, Chief Justice.

Where a Carrier is robb'd, he is liable to make Satisfaction in Respect of the Reward he takes, and not because the Hundred is answerable over to him; for a Carrier was liable at Common Law, because he might be robb'd by Combination, and that might be so secretly contrived, that no Proof could be made of it; but the Hundred was made liable by the Statute of Winton.

He is not a Judge but a Minister in this Case, and therefore if he refuse to administer the Oath, &c. he is liable to an Action at the Suit of the Party grieved. 1 Leon. 323. Justice of Peace.

And tho' the Statute of 27 Eliz. directs, that the Oath and Examination shall be before a Justice inhabiting in or near the Hundred, yet if it be taken by a Justice in London, dwelling near the Hundred, 'tis good, because the Statute gives him no Jurisdiction, but is directory only how and in what Manner the Oath and Examination should be. 1 Cro. 211. S. C. 1 Jon. 239. S. C. Helyer against The Hundred of Benburst.

A Traveller was robb'd on a Sunday in Time of divine Service, if he makes Hue and Cry according to the Statute, the Hundred shall be charged, for many Persons are necessitated to travel on that Day, as Physicians, &c. and 'tis an Act of Justice to pursue the Robbers, and all ministerial Acts done on a Sunday are good. 2 Cro. 496. Wayte against the Hundred of Stoke. But see 29 Car. 2. c. 7. s. 5. that the Hundred shall not

be chargeable for the Robbery of Persons travelling on Sundays, but the Inhabitants must make Hue and Cry, or are liable to the same Forfeiture to the King as they would have been to the Party robbed.

A Carrier coming towards London was assaulted in an Hundred, and the Felons took his Horse and Pack in which the Money was, and led him into another Hundred where they robb'd him; adjudg'd that the first Hundred is only liable; for he shall be said to be robb'd, where he was first assaulted, and where the Horse was first taken; but if the Carrier had led his Horse himself into the other Hundred, then that Hundred should be charged; because by his leading his Horse the Money was still in his Possession, and no Robbery was done till he came into the other Hundred.

For

Hundred. Hunting.

For Charging the Hundred upon a Robbery, see the late Act of 8 Geo. 2. c. 16. Title *Constable*; and see after, Title *Robbery*, where the modern Way of bringing the Action against the Hundred is set forth.

Hunting.

For the Explaining this Act, see 3 Inst. 75.

2 Roll. Rep. 134.

SUSPECTED of Hunting unlawfully in Chases, Warrens or Forests in the Night-time, with painted Faces or other Disguises, may by a Warrant be brought before a Justice; and if upon Examination he *conceal* the Hunting, or any of the Offenders, such *Concealment* is *Felony*; if he *confesseth*, then it is an Offence finable by Justices at next Sessions. 1 H. 7. cap. 7.

My Lord Rolle tells us, there are four Things requisite to make this Offence *Felony*:

1. An Information to a Justice of Peace for the Offence.
2. His Warrant upon it.
3. The Examination of the Offender.
4. His Denying the Fact.

But the *Felony* seems to consist chiefly in the Denying the Fact; the Words of the Statute are, *wilfully concealing it*, but upon the Conviction the Offender shall have Clergy.

Convicted of Hunting, &c. with painted Faces, is *Felony*; disobeying a Justice's Warrant, or rescuing himself from the Officer, so that the Warrant cannot be executed, *Felony*.

When the Offender is examined, if he *confesseth*, he may be bound to the Good Behaviour with Sureties, or be committed; otherwise it may happen that he may not be found, if any *Concealment* should be proved against him, because that is made *Felony*. 1 H. 7. c. 7.

Hunting in Parks, Woods, or inclosed Grounds, 3 Months Imprisonment, bound to good Behaviour, with Sureties for 7 Years.

Justices in Sessions may determine this Offence; the Offender shall pay treble Damages, to be assessed by Justices in Sessions; and upon Satisfaction and Acknowledgment of the Offence, they may release the Good Behaviour. 5 Eliz. c. 21. 3 Jac. 1. c. 13.

Any Hunting unlawfully by more than Three, is a Riot.

A Warrant against one Hunting in Corn.

Suffex, to wit, **W** Hereas Complaint hath been made unto me, That P. S. of the Parish of H. Gent. did, on the 27th of June last past, hunt with Spaniels in the Ground of W. A. and without his Consent, there being Corn then standing, growing and eared in the same Ground, by Reason whereof the said P. S. hath forfeited the Sum of 40 s. to the said W. A. being the Owner of the said Corn: These are therefore in his Majesty's Name to command you forthwith, upon Sight hereof, to warn the said P. S. personally to come before me, or some other Justice of the Peace of this County, to be examined concerning the Premises. Given under my Hand and Seal, &c.

23 El. c. 10. f. 4.
One Justice hath power to examine and to bind over to the Sessions, where this Offence is to be tried upon an Information.

If the Offender doth not appear on the Return of the Warrant, then instead of these Words (*to be examined*) say,

To give Bond with Sureties for his Appearance at the next General Sessions of the Peace to be holden for this County, to answer the Premises; and if he shall refuse so to do, that then you safely convey him to the Gaol of, &c. and deliver him to the Keeper thereof, Commanding you the said Keeper to receive the said P. S. into your Custody, and him safely to keep until he shall find Sureties as aforesaid. Given under my Hand and Seal, &c.

A License to hunt, and take away Dogs,
&c.

I Sir T. P. of, &c. have given and granted, and by these Presents do give and grant unto R. B. of, &c. Gent. full Power to hunt from Time to Time, and at all Times hereafter, for and during the Term of, &c. in or upon the Manor or Lordship of H. in the said County, and in and upon the Lands and Grounds thereof, doing no Damage to the Owner or Owners of any Corn, Grass, Hay or Woods there. And I the said Sir T. P. do hereby likewise give Power and Authority unto the said R. B. at any Time during the said Term, to seize and carry away the Dogs of any Person or Persons, who shall at any Time hereafter, within the Term aforesaid, be found Hunting within the said Manor, without the License or Consent of the said R. B. and to cause the said Dogs to be delivered to the Bailiff of me the said Sir T. P. to be used by me in such Manner as I shall think fit. In Witness whereof, I the said

said Sir T. P. have hereunto set my Hand and Seal this 28th Day of June Ann. Dom. 1724.

An Indictment for keeping Hounds; not having One hundred Pounds a Year.

22 & 23 Car.
2. c. 25.

* If a Hare,
then say, One
Hare of the
Value of One
Shilling within
the Parish a-
foresaid, &c.

Middx. to **T**HE Jurors, &c. That T. W. of, &c. in the
- wit, said County, Yeoman, on the 29th Day of
September in the 9th Year of the Reign, &c. and on divers
other Days and Times, as well before as afterwards, at H. a-
foresaid in the said County, had and kept Coney-Dogs, to hunt
and chase Hares and Conies; and that the said T. W. on the
Day, Year and Place above mentioned did hunt and kill with
the said Dogs * two Conies of the Value of Six-pence in a cer-
tain inclosed Ground of R. B. of H. aforesaid, Esq; called the
Warren within the Parish aforesaid, when the said T. W.
never had Lands or Tenements or any other Estate of Inheritance
in his own Right, or in his Wife's Right, of the clear yearly
Value of One hundred Pounds a Year, or for the Term of his
Life, or at the Time of the Hunting aforesaid had any Lease or
Leases of ninety-nine Years, or for any longer Term, of the clear
yearly Value of One hundred and fifty Pounds, and not then
being the Son and Heir apparent of an Esquire, or other Person
of higher Degree, or the Owner of any Forest, Park, Chase or
Warren, in Contempt of our said Sovereign Lord the now King,
and contrary to the Form of the Statute in such Case made and
provided, and also against the Peace of our said Sovereign Lord
the King, his Crown and Dignity, &c.

For hunting by Night in a Park, and concealing it.

1 Hen. 7. c. 7.

Middx. to **T**HE Jurors, &c. That J. O. of, &c. and
- wit, R. B. of the same Place, Yeoman, on the 1st
Day of September in the ninth Year of the Reign, &c. having
assembled themselves, together with many other Malefactors un-
known, between the Hours of Eleven and Twelve in the Night
of the same Day, with Force and Arms, that is to say, with
Staffs, Guns, Bows and Arrows, did break and enter the Park
of our said Lord the King at L. in the said County, and did
unlawfully hunt, and kill with the said Guns charged with
leaden Bullets, two Bucks of our said Lord the King then
there feeding in the said Park, and did carry away them so
being killed, against the Peace of our said Lord the King; and
that afterwards, that is to say, on the fifth Day of February
in the same ninth Year above mentioned R. W. Park-keeper of
our said Lord the King of his said Park at H. aforesaid in the

the said County, did inform H. P. Esq; one of the Justices of our said Lord the King assigned to keep his Peace in the County aforesaid, of that unlawful Hunting made in Manner and Form aforesaid; which said Justice, afterwards, that is to say, on the said fifth Day of September in the same Year above mentioned did direct his Warrant in Writing to one W. V. one of the Constables of the Hundred of L. in the said County, (the Town of H. aforesaid being in that Hundred) the Tenor whereof was, That the said Constable should take and arrest the said J. O. and R. B. and should bring them before the said H. P. to be examined concerning the said unlawful Hunting; And that the said J. O. and R. B. afterwards, that is to say, on the said 5th Day of September in the same Year above mentioned, at H. aforesaid in the said County, were brought by the said Constable, by Virtue of the said Warrant, before the said Justice, and being then and there examined by him, by his Discretion concerning the said unlawful Hunting, and of the Doers, in that Behalf, did wilfully and feloniously conceal the same, and each of them did wilfully and feloniously conceal the same, against the Peace of our said Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Indictment.

IS the Verdict of a Jury charged to inquire into the Offence, &c.

This being in the Nature of a Declaration for the King, ought to be certain, and must not be supplied by Implication or * Intendment; and if 'tis upon a Penal Statute, never recite it, because a small Misrecital makes it vicious. • 4 Rep 44. B.

3 Bulst. 212.

In every Indictment these six Things are requisite; which see in the Margin

Therefore *Misnomer* shall not be made good by any *Alias dictus* (otherwise said or called).

But where the Name of the Offender cannot be known, it may be *cujusdam ignoti* (of a Person unknown), because the King is intitled to the Forfeiture; and if 'tis for Goods stolen, they may be carried into another County, and so the true Owner not known. *Dyer* 99. *Moor* 466. *Dyer* 285.

One of the Regicides was indicted by the Name of *Henry Martyn*, who said, That his Name was *Marten*, but being known by that Name, and being the same in Sound, tho' it differs in one Letter in the Spelling, the Indictment was held Good.

1. The Name and Surname, and Addition of the Party indicted.
- 2 Hal. H. P. C. 181.

Cro. Eliz. 490.
Long's
Calc.

Indictment for stealing a certain Piece of Linen *cujusdam A. N.* (of one *A. N.*) and did not say, *De bonis & catallis ejusdem A. N.* (of the Goods and Chattels of the said *A. N.*) this is naught; for it must appear whose Goods they were at the Time of the Taking, if that can be known, because they may be let or pawned to another.

'Tis good by another Name, if the Party is known by both.

2 Hal. H. P. C.
175.

If there is a wrong Addition, or none at all; yet if the Party appear, that Fault is cured. *Sid.* 247. *King and Warren.*

Dyer 46. B.

Indictment for murdering his Wife, setting forth, That she was *in pace Dei, &c. quousque* (in the Fear of God, &c. until) the Husband *præfari* the Wife *de H. præd' in Com' præd'*, Yeoman, &c. (of the said *H.* in the said County, Yeoman, &c.) The Judges were in great Doubt whether this Indictment should be quashed for Want of an Addition, because if the Word *Yeoman* should relate to the last Antecedent, then it must refer to the Wife; but at last they considered, that *ex vi termini* (from the Meaning or Force of the Word) this was not an Addition to a Woman, and therefore the Indictment good.

The Place of Abode is expressly required by the Statute of 1 H. 5. c. 5. and this Omission is not helped by the Statute of Amendments; for 'tis excepted out of that very Act.

If there are two Villis in one Parish, the Offender must be named of such a Vill *in Parochia de H.* (in the Parish of *H.*) and not of the Parish generally.

2. The Year
and Day.

As to this Matter any Certainty, by which the Year and Day may be known, is sufficient.

An Offence committed before *Midnight* must be laid in the Indictment to be done the Day before; if after *Midnight*, then the Day after.

B. 11. 9. 2.

Striking one Day, and the Party dieth a Week following; the Day on which he dieth must be set forth.

4 Rep. 41.

So a Stroke *1 Maii* at *B.* &c. and Death the Day following at *R.* & sic felonice *murdravit* at *B.* (and so feloniously murdered at *B.* &c.) it is not good; but if he had said, *Et sic modo & forma murdravit* (and so in Manner and Form hath murder'd), or *præd' secundo die Maii* (on the said second Day of *May*), it had been otherwise. *H. R. C.* 207.

C. 9. H. 11. 1.

If the Fact be laid on a Day to come, or as done at several Times, the Indictment will be quash'd.

Syer's Case,
3 Inst. 230.

But 'tis not necessary to set down the very Day in which the Offence was done; so that 'tis before the Offence, the Jury ought to find the true Day, because the Forfeiture relates to the Day found by the Verdict, and not to the Day in the Indictment.

Neither

Neither is it necessary, that the Jury should find the Party guilty at that very Day laid in the Indictment, but to find the Fact as in Truth it is proved; and it was done in Sir Henry Vane's Case, *Keb.* 16.

If after the Offence; yet if upon the Evidence the Jury think him guilty, they ought to find him so, because they are sworn *dicere veritatem* (to say the Truth). 3 *Inst.* 230.

In Cases of Omission, *viz.* for not doing what we ought to do, 'tis not necessary to set down the Day and the Year.

If the County is named in the Margin, 'tis well enough; 3. Place. but if no Town is named where the Fact was done, or any Place, and in Truth there is no such to be found, the Indictment is void. 1 *H. 5. c. 5.* 18 *H. 6. c. 12.*

The Defendant was outlawed upon an Indictment for Murder; which was reversed, because it did not set forth, That *ex malitia sua præcogitata* (of a Malice aforethought) he committed the Murder, nor any Place where it was done, but only where the Assault was; and that may be in one Place, and the Murder in another. Dyer 69. a.

The Word *Hereford* was in the Margin, and the Indictment was, That *R. G. de R. in Com' Radnor, Generosus* (that *R. G. of R.* in the County of Radnor, Gentleman), committed the Burglary at *S. in Com' præd'* (in the County aforesaid,) and there being two Counties named before, it was uncertain to which the Words *Com. Præd'* (County aforesaid) should refer, and therefore quash'd. Grymes's Case, Cro. El. 436.

But the County must always be named in the Body of the Indictment, in Cases of Felony; but for any other Offence, 'tis sufficient in the Margin. Child's Case, Cro. El. 606.
751. Queen and Hammond.
1 Bullst. 203.

If a Stroke be in one County, and Death ensues in another, the Indictment in the County where the Party died is good, by the Statute of 2 & 3 *Ed. 6. c. 24.*

'Tis sufficient to lay the Fact to be committed in *Parochia* (in the Parish), though that is an Ecclesiastical Division. 3 *Mod.* 158. *Goring and Deering.*

Treasons, Felonies, Robberies, Murder, &c. done on the Seas, or beyond Sea, may be tried in any Place appointed for that Purpose by the King's Commission. *H. P. C.* 204. 35 *H. 8. c. 2.*

A Robbery in *Middlesex*, and the Thief is taken with the Goods in *Suffex*, he may be indicted for the Felony there; but for the Robbery, it must be in *Middlesex*.

If the Indictment is for taking away Goods of the Church, you must say, *Bona Parochianorum in custodia Guardianorum Ecclesie de H. &c.* (the Goods of the Parishioners in the Custody of the Church-wardens of *H. &c.*) 4. Certainty of the Person.

For Goods taken in the Life-time of a Man, who maketh an Executor, and dieth, it must be *de bonis Testatoris* (of the Goods of the Testator); but if taken after his Death, then

'tis *Testatoris in custodia Executorum* (of the Testator in the Custody of the Executors).

The Inhabitants of a Parish, though no Person is particularly named, may be indicted for not repairing of an Highway. 2 *Roll. Abr.* 79.

5. Names and Value of the Things taken away.

If dead Things, to say, *Bona & catalla* (Goods and Chattels) generally, is not good; but *Bona & Catalla*, and then expressing the Names and Certainty thereof, is good.

If living Things, you must not say, *Bona & Catalla*, but *Equum* or *Oves* (Horses or Sheep), as the Case is.

An Indictment for Things *feræ naturæ* (of a wild Nature), as Hares, Partridges, &c. is not good, unless taken in a Park or Warren.

Value.

Then as to the Value, if the Indictment is of living Things, and likewise of such which are sold by Weight or Measure, it must be said * *pretii*, &c. (of the Price, &c.) and yet an Indictment for taking Fishes in a Pond was held good, without setting forth the Number or Value, against the Opinion of *Twissden*. 1 *Lev.* 203. *King* and *Whetwang*.

* Because 'tis the Value which makes it either Petty Larceny or Felony: And if the Indictment

is in Trespass, then 'tis to aggravate the Fault.

Of dead Things not going by Weight or Measure, it must be said *ad valentiam* (of the Value).

Now the Reason why the Value is to be expressed in Felony is, That it may appear whether 'tis Petty Larceny, or not; and in Trespass, 'tis to aggravate the Offence.

6. Nature of the Offence, and with what Weapon.

Oppressor multorum Hominum (Oppressor of many Men), without shewing in what Manner, *communis Forestallarius* (a common Forestaller), or *Latro* (a Thief), or *Pacis Perturbator* (a Disturber of the Peace), or that he is *mali Gestus* (of evil Gesture): These are all too general, and therefore not good.

But *communis Barreclator* (a common Barretor), and concluding *contra formam Statuti* (against the Form of the Statute) is good, because 'tis an Offence made by a Statute. 2 *Roll. Abr.* 79.

So *communis Rixatrix*, or a common Scold, may be indicted generally under that Name.

For an Escape of a Person taken on Suspicion of Felony, you must set forth what Felony. *H. P. C.* 206.

In Treason it must be *proditorie* (traiterously), and conclude *contra ligeantiam suæ debitum* (against the Duty of his Allegiance); in Murder, *Murdravit*, which is *vocabulum artis* (a Word of Art), and implies Malice; in Burglary, † *Burglariter* (another Word of Art), and the Breaking must be of a Mansion-house; in Rape it must be *Rapuit* (he hath ravished); in Felony, *Felonice* (feloniously); for *cepit & fu-*

† Or Burgalariter. *Cro. El.* 920. *Ryle's Case.*

4 *Rep.* 39. b.
2 *Cro.* 20.

ratut

ratus (took and stole) is not sufficient, but *cepit & abduxit* (took and carried away) is well enough.

But in all these Cases, and in Trespasses, the Indictment must be *vi & armis* (with Force and Arms), and it must conclude *contra pacem* (against the Peace).

For in Forcible Entry, *vi & armis* is not requisite, because 'tis implied by *manu forti* (with a strong Hand) but it must conclude *contra pacem*.

If an Offence is created by a Statute, *contra formam Statuti in hujusmodi casu edit. & provis. &c.* (against the Form of the Statute in that Case made and provided, &c.)

If Murder be laid to be committed with a Sword, you may give in Evidence any Weapon of the like Nature.

It will lie for a Conspiracy, without setting forth any Act done. 1 Lev. 62. *King and Kimberty, &c.*

In all these Cases, if the Criminal pleads Not guilty, and his Plea is recorded, yet he may withdraw it, and confess the Indictment, and then the Entry is, that *relicta verificatione cognovit indictmentum* (by withdrawing his Verification he confesseth the Indictment).

* If the first Indictment was void for Insufficiency; as in *Vaux's Case. 5 Rep.*

If the Trial was in a wrong County.

+ If the Indictment is good, though it supposeth the same Felony done in another Year, though by another Name, if known by both, though the Process was erroneous.

For false *Latin*, or for false and incongruous Words; as *viginti* for *viginti* (twenty for twenty); nor for the Omission of *Gladiis, Baculis & Cultellis* (of Swords, Staffs and Knives). 38 H. 8. c. 8.

Quashed for saying *ad Generalem Sessionem pacis* (at the General Sessions of the Peace), leaving out *Domini Regis* (of our Lord the King). 1 Lev. 175. *King and Dudeney.*

By insensible Words; as *Murdredum* for *Murdrum*, because 'tis neither *Latin*, nor a Word of Art.

By leaving out *contra formam Statuti* (against the Form of the Statute) where the Offence is created by an Act of Parliament; as *Riot, &c.*

It was *jurati & onerati dicunt* (being sworn and charged they say), omitting *super sacramenta sua* (upon their Oaths); and tho' it cannot be intended otherwise than upon Oath, because of the Word *jurati*, yet it was quashed.

Indictment was, *quod per sacramentum A. B.* (that upon the Oath of *A. B.*) and the rest of the Jury, omitting *proborum & legalium hominum* (good and lawful Men), and quashed for this Omission.

It shall never be quashed for false *Latin*, if by any Intendment it can be made good.

Andrews and
Ld. Cro. well,
2 Cro. 32.
Farr and Rast,
3 Cro. 185.
That if it con-
cludes contra
formam statut'
'tis sufficient.

* Where after
an Acquittal it
will lie for the
same Offence.
† Where not.

Not void.

Void.

Sid. 140.

Oyley's Case,
2 Cro. 635.
Palm. 283.

Cro. Eliz. 108.
Bicker and
others.

Long's Case,
5 Co. 121.
Cro Eliz. 754.
Indictment on
Statutes.

And yet where two Men were indicted for that *felonice capi* (that he feloniously took), this was held void.

Indictments for any heinous Offence; as Perjury, &c. and even for Nuisances, are never quashed upon a Motion; but the Defendant must plead or demur to it.

And if there are two Indictments against a Man for the same Offence, *viz.* One found by the Coroner's Inquest, and another by the Grand Jury; he may be tried on both at the same Time.

For an Offence at Common Law, which is *contra pacem* (against the Peace) an Indictment will lie at Sessions; so for Fraud or Deceit; as for selling deceitful Goods, or by false Weights and Measures; and tho' there are particular Statutes relating to this Matter, yet that doth not alter the Case; for the Difference is this, That where an Offence at Common Law is made, so likewise by any Statute, and a Punishment appointed by that Statute, yet the Offender is indictable, as it is an Offence at common Law; but where a Statute creates a new Offence, and inflicts a Punishment, that must be pursued, and no other.

'Tis not safe to recite the Statute *verbatim* (verbally), or the Beginning, Continuance or End thereof, because any Misrecital will make the Indictment void; but you must set forth the Substance thereof, and the Offence; for though you conclude *contra formam Statuti* (against the Form of the Statute), that will not help, because those Words relate only to Circumstances, and not any Substance. *Dyer* 363.

And therefore where one was indicted for Usury, in taking more than 6 *l.* for the Loan of 100 *l.* and concluded *contra formam Statuti*, though it appeared plainly to be corrupt; yet because it was not expressly set forth that it was by corrupt Lending, the Indictment was quashed. 11 *Rep.* 58.

2 Cro. 616.

If a Writ of Error is brought upon an Indictment, the Defendant must appear and put in Bail in Person; and therefore Sir William Read, who was ninety Years old, was brought in a Horse-Litter to the Hall, and upon Mens Shoulders to the Bar, to assign Errors.

Indictment upon a Penal Statute, where the King is to have the Forfeiture, must be brought within two Years after the Offence; but where a common Person is to have it, then within a Year, except it be otherwise directed by the Statute.

Many of the aforesaid Niceties will be now exploded; and the 4 *Geo. 2. c. 26.* provides against false *English*, &c.

Indictment; Process thereon.

AFTER an Indictment is found by the Jury for any Trespas upon a Penal Statute, if the Defendant doth not come in the next Sessions, a *Venire facias* may be awarded in the Name of the King, directed to the Sheriff, and *Teste* by the Justice: This is only for an Appearance; the Form is thus;

Venire Facias.

Middx. to **G**EORGE the Second, *by the Grace of God of wit,* Great Britain, France and Ireland King, *Defender of the Faith, &c. To the Sheriff of Middlesex, Greeting:* We command you, that you do not omit by reason of any Liberty within your Bailiwick, but that you enter therein, and cause J. O. of H. in your County, Labourer, to come before Sir J. P. Baronet, and G. G. Esq; two of our Justices, assigned to keep our Peace in the said County, and also to bear and determine divers Felonies, Trespases and other Misdemeanors committed in the said County, at S. in your County, * on the 30th Day of July * The Day of next ensuing, to answer us of divers Articles presented, concerning him the said J. O. and do you then have there this Precept, Witnes Sir J. P. Baronet, at S. the 15th Day of June in the ninth Year of our Reign. the Sessions.

If the Sheriff return the Defendant summoned, and yet he doth not appear at the Return of the *Venire facias*, then you must sue forth a *Distringas* against him; the Form of which is as followeth:

Middx. to **G**EORGE the Second, *by the Grace of God of wit,* Great Britain, France and Ireland King, *Defender of the Faith, &c. To the Sheriff of Middlesex, Greeting:* We command you, that you do not omit by reason of any Liberty within your Bailiwick, but that you enter therein, and distrain J. O. of H. in your County, Yeoman, by all his Lands and Tenements, and that you answer for the Issues of the same to us, so that you have his Body before the Keepers of our Peace, &c. to answer, &c. Witnes, &c.

And so a Distress Infinite till Appearance.

But if the Sheriff return *Nihil habet* (that the Defendant hath nothing) then you must sue forth a *Capias* against the Defendant, the Form whereof is as followeth:

* The Day of
the Sessions.

Sussex, to **G**EORGE the Second, by the Grace of God
wit, of Great Britain, France and Ireland King,
Defender of the Faith, &c. To the Sheriff of Sussex, Greeting:
We command you, that you do not omit by reason of any Liberty
within your Bailiwick, but that you enter therein, and take
J. O. of H. in your County, Yeoman, if he shall be found in
your Bailiwick, and safely keep him, so that you may have his
Body before the Keepers of our Peace, and also our Justices af-
signed to hear and determine divers Felonies, Trespasses, and
other Misdeeds committed at L. in your County on Thursday
* the 9th Day of July next ensuing to answer us of divers
Trespasses, Contempts and Offences, whereof he stands indicted;
and do you then have there this Writ. Witness Sir J. P. Bart.
and G. G. Esq; at L. &c.

If the Sheriff return *Non est inventus*, &c. (that the De-
fendant is not found in his Bailiwick), then you must have
an *Alias*, and so a *Pluries*, and then an *Exigent*, the Form
whereof followeth:

Middx. to **G**EORGE the Second, by the Grace of God
wit, of Great Britain, France and Ireland King,
Defender of the Faith, &c. To the Sheriff of Middlesex, Greet-
ing: We command you, that you cause to be exacted J. O. of
H. in your County, Yeoman, until according to the Law and
Custom of our Kingdom of England he is outlawed, if he should
not appear; and if he should appear, then do you take him,
and safely keep him, so that you may have his Body before our
Justices assigned to keep our Peace in the said County, and also
to hear and determine divers Felonies, Trespasses, and other
Misdeeds committed in your said County, at the General Sessions
of the Peace, to be held next after the Feast of St. Thomas
the Martyr next ensuing, wheresoever it should happen to be
held in the said County, to answer us of divers Trespasses,
Contempts and Offences whereof he stands indicted, and do you
then have there this Writ. Witness Charles Earl of D. at
L. the first Day of May in the first Year of our Reign.

The Return.

AT which Day Sir R. F. Knight, Sheriff of the County
aforesaid returned, that at his County, held at L. on the
fourth Day of July in the first Year of the Reign, &c. the
within written A. B. was first exacted, and so at four other
Counties then next ensuing there held, till the said A. B. was
five Times exacted, and did not appear; therefore he is out-
lawed.

This

This Outlawry must be certified into the King's Bench, because the Justices of Peace cannot award a *Capias Utlagatum*.

But the Justices out of Sessions may award a *Superedeas* to stay any of the Proceedings aforesaid, before the Outlawry is certify'd, the Form whereof is as followeth:

Suffex, to **G**EORGE the Second, *by the Grace of God of wit, Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Suffex, Greeting: Because J. O. of H. did come before the Keepers of our Peace, and our Justices assigned to hear and determine divers Felonies, Trespasses and other Misdeeds committed in your County at L. on Thursday, &c. and hath found sufficient Security for his Appearance at the next General Sessions of the Peace for the County of Suffex aforesaid; therefore we command you, that you intirely cease from any further exacting and outlawing, taking, or in any Manner troubling the said J. O. upon Account of the said Trespasses, Contempts, and other Offences, whereof he stands indicted; and after what Manner you shall have executed this our Precept, do you make appear to four Justices aforesaid at L. aforesaid, on Thursday, &c. and do you then have there this Writ. Witness Sir T. P. Bart. and G. G. Esq; at L. aforesaid, the 12th Day of May in the 9th Year of our Reign.*

Traverse of Indiaments, &c.

THIS is the most solemn and antient Way of trying the Fact: All Indiaments may be traversed, that is, you may take Issue upon the Matter, or deny the chief Point in the Indiament.

This Traverse is to be tried by a Jury at the General Quarter-Sessions, except in Riots and Forcible Entries.

By the Statute of 11 Will. the Clerk of the Peace shall have no more than 2 s. for drawing an Indiament, upon Pain to forfeit 5 l. to the Party grieved; if he draw it defective, shall make a new one without Fee, under the same Penalty.

Infant, See *Jeme Covert*, and *Recognizance*.

Information,

Information.

Several Laws have been made concerning Informers upon penal Statutes. Of these there are two Sorts.

First, The Attorney General, and the Clerk of the Crown-Office, who are *honorarii* & inform' *propter Officii necessitatem* (honourable; and Informers for the Necessity of their Offices) tho' involuntary.

3 Inst. 191.

The other are common Informers, who are likewise necessary, though my Lord Coke calls them *turbidum Hominum genus* (a troublesome kind of Men), and these are always voluntary.

Now as to these last Sort of Men, the Statutes do relate,

That every Informer shall exhibit his Information in *propria persona* (in his proper Person) or by Attorney.

† Which may be in Sessions.

That he shall not afterwards agree with the Offender without Leave of the Court; if he doth, and is † convicted of it, he must stand in the Pillory two Hours in a Market adjoining, and forfeit 10 *l.* to the King and Party grieved.

That if he delay or discontinue his Suit, or be nonsuited, or if the Verdict pass for the Defendant, the other shall pay Costs.

These Matters, by the Statute of 18 *Eliz. c. 5.* are inquirable by the Justices in their Sessions.

1 And. 116.
4 Leon. 55.

The Preamble of this Statute is for redressing Disorders in *Common Informers*; and about seven Years after it was made, one *Knivett* brought an Information on a Penal Law, and there was a Verdict for the Defendant; and the Question was, Whether the Informer should pay Costs, because (it was said) he was not a *Common Informer*, that being the first Prosecution he made? But it was answered, That the Preamble of the Act did not make the Law, but the enacting Part, and that it was general against *all Informers* on penal Statutes.

Nota; Where a Statute gives a Penalty to a *Stranger*, and he sues for it, he is a common Informer, and shall pay Costs upon the said Statute 18 *Eliz.* but where the Penalty is given to the *Party grieved*, he is not a common Informer, nor liable to Costs.

* This Statute doth extend to common Informers, and not to the Party grieved.
Noy 71.

By the Statute 31 *Eliz. c. 5.* * no Man is to be an Informer, who is disabled by any Misdemeanor: He must not lay the Offence in any other County, but where it was really done, except in *Champerty*, concealing Customs, Extortion, buying Titles, Forestalling, Ingrossing, Regrating, where the Penalty exceeds 20 *l.* which may be laid in any County.

But

But by the Statute † of 21 Jac. 1. c. 4. the Informer must make Oath, that the Offence was done in the County where the Information was exhibited (except in the Cases aforesaid) and within a Year before it was commenced, and if not proved to be done within the County, the Defendant shall be acquitted.

† Yet an Action of Debt upon a Penal Statute may be brought in B. R.

This Statute doth not extend to any Offence created since, so that Prosecutions on subsequent Penal Statutes are not restrained thereby.

But all Informations and popular Actions on Penal Statutes, made before that Act, must by Virtue thereof be brought in the proper County where the Fact was done. *H. 10 W. B. R.*

By 4 & 5 Will. & Mar. 18. one Justice of the Peace of the Place where the Cause of the Information doth arise, may take Recognizance of the Informer in the Penalty of 20 l. to the Defendant, to prosecute with Effect, and to abide by such Order as the Court shall direct.

This Recognizance he must deliver to the Master of the Crown-Office, or otherwise he is not to file any Information, or issue any Process for Trespasses, Batteries, or other Misdemeanors, without Motion in open Court.

There must be an Entry made in the Office, and a *Memo-randum* thereof filed in some publick Place, that every Person may see the Recognizance without Fee.

If the Defendant appear and plead, and if the Informer doth not within a Year after Issue joined procure a Trial, or if the Defendant hath a Verdict, or the Informer procure a *Non Prof.* the Court shall award Costs to the Defendant, unless the Judge doth certify on record that there was Cause for the Information; and if the Costs are not paid within three Months after they are taxed, then the Defendant shall have the Benefit of his Recognizance.

A Note must be made of the Day, Month and Year, of exhibiting the Information, and from that Time 'tis to be accounted a Record, and till then no Process shall be issued; and when that is done, the Name of the Prosecutor must be indorsed, and upon what Statute the Prosecution is made, and the Clerk doing contrary forfeits 40 s. to the King and the Party. 18 Eliz. c. 5. *Concerning Informations.*

It must be exhibited within a Year after the Offence, but in Default of Prosecution, and where the King hath any Part, it may be commenced for that Part. two Years after the first Year is expired. 31 Eliz. c. 5. 4 Mod. 129. *Culliford and Blandford.*

If the Informer † die, the Attorney General may proceed, and if a *Non Prof.* be obtained, the Informer may go on. † Release, or is Nonsuit.

Penal Laws are *stricti Juris* (strict Laws), and therefore the Statutes of *Jeofails* do not extend to them.

The

Information. Inns and Inn-keepers.

The Sessions cannot try an Information, unless they have Jurisdiction by some Statute; but they are to proceed upon Indictments.

If two Informations are exhibited against the same Person for the same Offence, and in one Court at the same Time, they are both void, because there is no Priority of Time to attach the Right, more in one Informer than in the other; but if the Defendant plead, That one Information was exhibited such a Day in the Term, and that before that Time, (*viz.*) on such a Day in the same Term, another Information was exhibited, and Judgment obtained, &c. this is a good Plea in Bar. *Hob. 128. Pie and Coke, 2 Lev. 141. Hutchenfon and Thomas,*

Where any Part of the Forfeiture upon a Penal Law is given to the Informer, he must set it forth, and demand it in the Information, or 'tis void. *Hob. 245. Pye and Westly.*

Raym. 192.

The *Venire* was *præceptum est* (it is commanded), and the Judgment *consideratum est* (it is considered) and left out *per Curiam* (by the Court), 'tis not good. 1 *Levinz* 123. *King and Cook.*

Where an Information is grounded on a Penal Statute, and it concludes, *contra formam Statuti prædicti* (against the Form of the Statute aforesaid), if that Statute is misrecited, the Information is wrong; but if it is concluded *contra formam Statuti in hujusmodi casu editi & provis.* (against the Form of the Statute in that Case made and provided), then it may be good; for the Court may take Notice of any good Act to punish the Offender.

Inns and Inn-keepers.

Vide Ale-houses.

York and
Grindstone,
1 Salk. 388.

A Djudged, that since Inn-keepers are bound to receive Guests, they may detain their Goods till Payment, &c. and that a Man is a Guest by leaving his Horse at an Inn, though he never lay in the House (which *Holt, Chief Justice, doubted*) because the Horse must be fed, by which the Inn-keeper receives Gain; but if it had been a Trunk, it might have been otherwise.

Parkhurst and
Forster,
Carth. 417.
Salk. 387.
5 Mod. 427.
S. C.

By the Statute 4 & 5 *W. c.* 13. 'tis enacted, That Constables, &c. may quarter Soldiers in Inns, Livery Stables, Ale-houses, Victualling-houses, Houses selling Brandy, Strong Waters, Cyder and Metheglin, by Retail to be drank in their Houses; the Question was, Whether Houses kept for Lodgings in *Epson*, and dressing Meat at so much *per Joint*, and selling

selling small Beer to Lodgers, and finding Stable-room and Hay for their Horses, if this is an Inn, or not? It was insisted, That this being a Common and Publick House kept for Gain, is within the equitable Construction of this Statute; but adjudged that it was not, because to quarter Soldiers on a Man against his Will, is contrary to the *Petition of Right*, 3 *Car.* 1. and therefore this Statute shall not be extended according to Equity; for 'tis not an *Inn*, because in such Places Men are to be entertained upon Access; but here it is upon a Contract; and an Inn-keeper is indictable if he refuse a Guest; but the Owner of an House is not, if he refuse a Lodger: Neither is it a *Livery-Stable*, for there the Accommodation is for Horses only, but here for the Horse and the Owner: Neither is it an *Ale-house*, because Ale is not sold to all publickly.

21 *Jac.* 1. c. 21. §. 2. No Inn-holder shall make Horse-bread, but Bakers are to make it, the Assize shall be kept, and the Weight reasonable: The Innholders shall sell their Horse-bread, and their Hay, Oats, Beans, Pease, Provender, and all Victual for Man and Beast for reasonable Gain without taking any Thing for Litter. But Inn-keepers dwelling in any Village being a Thoroughfare, and no City or Market-town where any common Baker is dwelling, to make Horse-bread of due Assize.

§. 4. If the Inn-keepers shall offend against this Act, the Justices of Peace, &c. have Power to inquire, hear and determine the said Offences. First Offence, Fine: Second Offence, Imprisonment for a Month: Third Offence, Pillory. And if he offend after Judgment of the Pillory, he shall be forejudged from keeping any Inn.

2 *Geo.* 2. c. 28. §. 11. Enacts, That no License shall be granted to keep a common Inn, &c. but at a general Meeting of the Justices acting in the Division where the Person dwells, and that all Licenses granted to the contrary shall be void.

§. 12. Provided that nothing in this Act shall alter the Method of granting Licenses for keeping of common Inns in any City or Town Corporate.

Inns are of Necessity and under the Inspection of the Publick, and he can't refuse to lodge travelling Persons, and 'tis chiefly upon his Account that the Inn-keeper has several Privileges which other Traders have not; as to detain a Horse till he is paid for keeping of it, &c. They are under the Power of the Justices of the Peace in the Places where they are situated; for if an Inn be erected in an inconvenient Place, 'tis a Nuisance, and may be suppress'd by Indictment; 'tis the same with an Ale-house; therefore several Statutes that have been made to prevent Tippling, and which appoint at what Price Ale shall be sold, have been

Inrollment. Issues.

been adjudged to extend to Inn-keepers. *Newton and Trigg*, 3 *Mod.* 329.

It is said that an Inn-keeper may be compelled by the Constable of the Town to receive and entertain a Person as his Guest. 5 *Ed.* 4. 2. *b.* *Dalton*, c. 7. 1 *Shaw.* 268.

Iron. See **Wool**, and Working thereon.

Inmates. See **Cottages**.

Inrollment.

B Argains and Sales of Lands may be inrolled by the Clerk of the Peace, if they lie in the same County; but a Justice of the Peace must join with him in taking the Inrollment; and this is by Virtue of the Statute 27 *H.* 8. c. 16.

It must likewise be made within six Lunar Months after the Date of the Deed; but when a Year, or Half a Year is mentioned in any Statute, then it shall be computed according to Calendar Months.

If the Land do not exceed the Value of 40 *s.* per Ann. then the Justice of Peace and the Clerk is to have each of them 1 *s.* if above that Value, then 2 *s.* 6 *d.* a-piece for their Fees.

1 *Geo.* 1. c. 55. By 3 *Geo.* 1. c. 18, §. 6. after 29 *Sept.* 1717. no Manors, Lands, &c. shall pass from Papist by Will or Deed, unless inrolled in six Months, in one of the Courts of Record at *Westminster*, or in County where; &c. by the *Custos Rotulorum* and two Justices and Clerk of the Peace, or two of them, whereof the Clerk of the Peace to be one.

By 3 *Geo.* 2. c. 29. §. 6. Such Deeds, &c. are good, if inrolled on 29 *Sept.* 1731.

Vide 11 *Geo.* 2. c. 11. gave farther Time for Inrollment, till 29 *Sept.* 1738. 14 *Geo.* 2. c. 21.

Insolvent Debtors. See Stat. 6 *Geo.* 1. c. 22.

Issues.

THE Forfeiture of Issues by Jurymen is to be levied by Record of Execution awarded by the Justices of the Peace, and this by Virtue of the Statute 27 *Eliz. c. 7.*

The Sheriff is to levy such Issues, and if he levieth more than he ought, then he forfeits five Marks to the King, and as much to the Party grieved.

Judgment in High Treason.

IN all Cases (excepting Counterfeiting of Coin) the Offender shall be drawn to the Gallows, and there hanged by the Neck and cut down alive, his Entrails taken out and burnt, his Head cut off, his Body quarter'd, and his Head and quarters hanged up.

So it is for uttering such Money, knowing it to be so. *Cro. Car. 383.*

So it is for Clipping. *Dyer 230. B.*

But for *Counterfeiting Money*, 'tis to be drawn and hanged, but not quarter'd.

In both Cases Judgment for a Woman is to be drawn and burnt.

Counterfeiting in this Case, is meant Counterfeiting by Coining, for that is esteemed an inferior Sort of Treason, in respect to such which concerned the Person of the King; and if *drawing and hanging*, but without *quartering*, is the Judgment for Coining, then by the same Reason it must be so for Clipping, for that seems a lesser Degree of the same Species of Treason. 1 Vent. 25.

In Petty Treason,

For a Man to be drawn and hanged,
For a Woman drawn and burned.

In Felony,

The Offender to be hanged 'till dead, and it is commonly said, That this cannot be altered to Beheading.

In

Judgment in High Treason.

In Petty Larceny,

To be whipt, and Forfeiture of Goods.

In Death by Chance-Medley,

There is no exprefs Judgment, but the Goods are forfeited.

In Death *se defendendo*,

The like as in Chance-Medley.

In Misprifion of Treason,

Forfeiture of Lands during Life, of Goods, and perpetual Imprifonment.

But the Goods of these Offenders are not to be feised before an Indictment found, or removed before Attainder.

Peculiar Punifhments are appointed by divers Statutes for feveral Offences, and in fuch Cafes the Juftices cannot mitigate; and therefore it is not warrantable to admit an Offender indicted on a Penal Law, to fubmit to a *Proteftation* of Not Guilty.

As to what relates to Executions, 'tis ufually faid, That in Treason the King may remit all other Parts of the Sentence, except cutting off the Head; but in Felonies, the Judgment muft be executed in the Method prefcribed by Law; and therefore, if in fuch Cafe the King fhould order a Criminal to be beheaded when the Judgment is to be hanged, it would be Murder in the Sheriff and his Officers, and they muft fuffer for it without Pardon.

But this is a Miftake; for in the Reign of *Ed. 6.* the Duke of *Somerfet* was attainted in Parliament of Felony, and yet was beheaded, which is no Part of the Sentence. And in the Reign of *Car. 1.* the Lord *Audley* was condemned likewise for Felony, and by the Opinion of all the Judges the Execution was changed from Hanging to Beheading.

Quare; For the Law feems otherwife notwithstanding thefe Cafes,

Jurors and Juries.

A Liens. 1 *Inst.* 156. b.
 Apothecaries. 6 & 7 *W.* 10 A. c. 14.
 Attainted for any Crime.
 Clergymen.
 Conspirators.
 Indicted.
 Infants under fourteen Years. 1 *Inst.* 157. a.

Who may not
 be a Juror.

There was formerly a great Inconveniency in returning of Jurors, for the Sheriffs would summon as many as they pleased; which was often done in great Numbers, to the Oppression of the People.

This was remedied by the Statute of *W.* 2. c. 38. by which they were ordered to summon in one Assize Twenty-four, and no more.

But it hath been adjudged, That these Statutes extend only to Jurors returned in Civil Cases, and not for Trials of Criminals; for in such Cases the Sheriffs might be commanded by the Court to return as many as they please; and 'tis usual to return sixty, because of the Challenges. *Kelynge* 16.

All Jurors upon Trials of *Issues* shall have in their own Name, or in Trust for them within the same County 10 *l.* a Year at least, above Reprizes, of Freehold or Copyhold Lands, or of Lands of Ancient Demesne, or in Rents in Fee-simple or Fee-tail, for their own, or some other Person's Life; and in *Wales* such Juror shall have 6 *l.* per Annum, and any returned of less Estate, it shall be good Cause of Challenge, and he shall be thereupon discharged, or upon his own Oath.

4 & 5 *W. & M.*
 c. 24. Continued per 10
Annæ for 11
 Years. Made
 perpetual by
 6 *Geo.* 2. c. 37.

If there are not enough of the principal Panel, the Sheriff must return the *Tales* out of some other Panel of Jurors then attending; and if such *Tales-men* withdraw, the Judge may fine them.

7 & 8 *W.* 3. c.
 32. f. 3.

Yorkshire being a large County, and many Persons therein qualify'd for Jurors; but that Service being forced on a few by the Corruption of the Sheriffs, therefore a Clause was made in the Statute above mentioned, prohibiting Persons to serve on Juries more than once in four Years, except in the City and Town of *York* and *Hull*, and Counties of the said City and Town.

Sec. 7.

That at the Request of such Jurors, the Sheriff of *Yorkshire* shall register their Names at the End of every Assize and Sessions, and shall give them a Certificate of their Attendance and Service.

Sec. 7.

Grand Jury.

That the Panel returned for the Grand Inquest shall consist of forty-eight Freeholders or Copyholders, and no more; each having 80 *l. per Annum*.

That at the Assizes there shall be ten Panels, and no more, of Petty Jurors; consisting of twenty-four Jurors in each Panel, except where Special Jurors are directed.

That at the Sessions there shall be but forty Persons returned to serve on the Grand Inquest, or any other Service.

Then there is a Clause, that the Inhabitants of *Westminster* shall not serve in any Jury at the Sessions held for *Midlesex*. If above seventy Years old and returned, he must serve if the Judge directs it; but he may sue the Sheriff upon *W. 2. cap. 38*.

Who may be
a Juror.

Any Freeholder or Copyholder who is the King's Liege Subject, and returned by the proper Officer.

In *Michaelmas* Sessions, the Constable shall return to the Justices a List of the Names and Abodes of Persons who are qualified to serve, between twenty-one and seventy Years of Age, a Duplicate of which List the Justices shall order the Clerk of the Peace to deliver to the Sheriff before *January* following.

This List must be enter'd into a Book, and kept amongst the Records of the Sessions, and none to be impanelled whose Name is not enter'd in the List. 7 & 8 *W. c. 32*.

If the Sheriff or his Bailiff, shall excuse any Person for Favour or Reward, or allow any Exemption to a Person under seventy Years of Age, he shall forfeit 20 *l.* to the Party grieved, or to him who shall sue for the same in any Court in *Westminster*.

3 & 4 Annæ,
c. 18.

And because the Constables, Headboroughs and Tithingmen, were negligent in returning such Lists; therefore by another Act, the Justices every Year at *Midsummer* Sessions shall issue out their Warrants, at least under the Hands of two of them, directed to the High Constables of each Hundred, requiring them to issue out their Precepts to their respective Constables, Headboroughs, &c. that they should meet the High Constable within fourteen Days after the Date of such Precept at some convenient Place within the Hundred, then and there to prepare a List as aforesaid; which List they must sign, and at the *Michaelmas* Sessions following deliver into Court.

The High Constable not issuing out such Precept to his Petty Constable or Headborough, forfeits 10 *l.*

The Petty Constable or Headborough not meeting according to the Precept, and failing to prepare a List, and to return it as aforesaid, forfeits 5 *l.*

Offenders to be prosecuted at the Assizes or Sessions; but there is no Direction how, or to whom the Forfeitures shall be applied, except it relates to a precedent Clause touching

Yorkshire,

Yorkshire, which directs one Moiety to the King, and the other to the Informer.

And Note; This Act, and those of 4 & 5 W. & M. and 7 & 8 W. 3. c. 32. are to be publickly read in open Court at the Quarter-Sessions, held after 24 June yearly.

This Statute of 4 & 5 W. & M. being made but for three Years, was continued by 7 & 8 W. for seven Years; and by another Act 1 Anne was farther continued for seven Years; was by another Act 10 Anne continued for eleven Years from the Expiration thereof, and from thence to the End of the next Session of Parliament; is now made perpetual.

Must be summoned at least six Days before the Session by shewing him a Warrant under the Seal of the Sheriff's Office. 7 & 8 W. 3. c. 32. §. 5. How and when to be summoned.

But if not at Home, then a Note left by the Officer at his Dwelling-house with any Person inhabiting there, is sufficient. §. 5.

If summoned otherwise than aforesaid, the Sheriff forfeits 20 l. to the Party grieved, to be recovered in the Courts at Westminster. §. 6.

None shall be returned in *Yorkshire* but once in four Years, the City of *York* and Town of *Kingston upon Hull* excepted.

Must consist of forty-eight Freeholders or Copyholders, and no more, each having 80 l. per Ann. Grand Inquest.

There shall not be above forty Persons returned at the Assizes or Sessions of the Peace for *Yorkshire*. 7 & 8 W. 3. c. 32.

And by the Statute 10 Anne, c. 14. §. 5, 6. the Words *Sessions of the Peace* in the former Act 7 & 8 W. shall be construed to extend to any Sessions of the Peace to be holden for any of the Ridings, and to Adjournments of such Sessions; but any Person of 150 l. per Annum, or more, serving as a Juror at such Sessions, shall not be exempted from serving as a Juror at Assizes in *Yorkshire* for four Years, or any other Term.

They may be more than twelve, and 'tis best to have an odd Number; and if twelve agree, 'tis conclusive to the Rest.

They ought not to have a Keeper, nor to be without Vic-tuals; but may be adjourned to give their Verdict.

If they discover their Secrets, they may be fined; and if they make a favourable Presentment, they may be committed, and fined.

A Juror was indicted, for that he was *communis Publicator Secretorum Dom' Regis & sui ipsius & diversarum aliarum Personarum cum ipso impanellat', &c. & contra Juramentum suum in ea parte præstit'* (a common Publisher of the Secrets of our Lord the King, and of his own and divers other Persons impanelled with him, &c. and against his Oath in that Be- Cornwall's Case, Moor 302.

half taken). It was objected, That this Offence did not lie in *Community*, no more than *communis Forefallator* (a common Forefaller), without shewing particularly in what; besides it was not alledged, that he was sworn to keep the Secrets, nor that what he discovered concerned his Oath. The Indictment was held insufficient.

If one of the Number is outlawed, or returned at the Nomination of another, it makes the whole Panel void.

Justices of the Peace may make an Alteration in the Panel after it is returned, if they see Cause; and may remove a Juror after he is sworn. 3 H. 8. c. 12.

Regularly they cannot inquire into any Thing but what ariseth in the County for which they are returned; and therefore if a Stroke be given in one County, and the Death happen in another, the Party could not be indicted where the Person died; but this is now remedied by the Statute of 2 & 3 Ed. 6. c. 24.

So likewise the Law in criminal Cases is now altered by other Statutes; as in Confederacies, Felonies, Murders, Robberies and Treasons done on the Sea; the Offender shall be tried, where the King, by his Commission, shall appoint. 28 Hen. 8. c. 15.

So in Treasons and Misprisions of Treasons done *out of the Land*, the Offenders shall be tried in the King's Bench by a *Middlesex* Jury, or by the King's Commission in any County by a Jury of that County. 35 H. 8. c. 2.

If the Grand Inquest *conceal* any Thing which they ought to present, the Justices of the Peace may impanel an Inquest to inquire of such Concealment, and fine them. 3 H. 7. cap. 1.

Dyer 53.

They may be punished by a Judgment in Attaint, if they give a false Verdict in any Court of Record, either in a Real or Personal Action, where the Debt or Damage is above 40*l.* but no more Witnesses must be produced to the Jury which is to try the Attaint, than what gave Evidence to the first Jury; and if it should appear, that the first Jury had a plain and positive Proof before them, tho' false, yet the Jury which tries the Attaint is not to consider that Falsity, but what they would have done themselves if they had been on the first Jury.

4 Leon. 46.

Any Person who is injured by a false Verdict, may have a Writ of Attaint against the Jury, unless where the King alone is a Party against a Subject, and the Jury find for him, tho' falsely, yet no Attaint lies in such Case; but 'tis otherwise where the Suit is, *Tam pro Domino Rege quam pro seipso* (as well for our Lord the King as for himself).

But this Way of punishing a Jury is seldom used, except where the Corruption is very apparent.

Cannot

Cannot be fined for giving a Verdict contrary to Evidence, where an Attaint lies against them, nor indeed where it doth not lie; because it is impossible for the Judges to know the Fact as the Jury may; for the Judge knows it no otherwise but by the Evidence given in Court; but the Jury are supposed to know it by other Methods, *viz.*

Jury how to be punished, and for what.
March 81.
3 Leon. 207.

By being returned of the Vicinage, by their own Personal Knowledge, by knowing the Witnesses to be Persons of no Credit.

So that if the Judge cannot have so much Evidence of the Fact as the Jury may, they may go against his Direction in Law; because where the Fact is not agreed, he cannot direct what is Law. *Vaugh.* 147.

If a Juryman will keep his Fellows without giving any Reason, or will withdraw from them, he may be committed and fined, because he is sworn well and truly to try the Issue; and therefore to be obstinate without Cause, or depart, is a Misdemeanor.

But if he differs in Judgment from the rest; though his Dissent be not as reasonable as the Opinion of those who agree, yet he cannot be fined, though he keep the rest for a Time from giving their Verdict.

For Misdemeanors they may be fined, but not barely for going against the Direction of the Court.

So in *Bayne's Case*, where the Jury agreed of two Verdicts intending to conceal one, if the Court should be satisfy'd with the other. *Cro. Eliz.* 778. *Wats* against *Brains*.

In *Wharton's Case*, they were not fined for giving their Verdict against the Direction of the Court only; but the Judges were of Opinion, That some unlawful Practices had been used to procure that Verdict. *Yelv.* 83. *Noy*.

In *Fry and Hordy's Case* the Verdict was set aside, because it was given upon the *Fillip of a Six-pence*; if *Cross* for the Plaintiff, if *Pile* for the Defendant, and the Six-pence turning up *Cross*, they all agreed to find for the Plaintiff. This was a *Northumberland Jury*, and they were all order'd to attend next Term in order to be fined. Jones 83.

So in *Wagstaff's Case*, the Jury were fined and committed, and upon a *Habeas Corpus* brought, they were not bailed; but it must be for some Misdemeanor, and not for refusing to find according to their Evidence, because they were not fined equally. *Hardres* 409. Raym. 131. Sid. 272. King and Wagstaff.

So if they cast Lots whether to find for the one or the other, 'tis a Misdemeanor. 2 *Lev.* 140. *King* against *Lord Fitz-walter*.

In Cases of Life or Member, if they cannot agree of their Verdict at the Assizes, they must be carried the Circuit, till they do agree. 1 *Vent.* 97. *King* and *Lodgingham*.

If the Jury at a *Sessions* cannot agree on their Verdict, they may, as in other Courts, be kept without Meat, Drink, Fire or Candles, till they agree.

1 Leon. 133.
Hall and
Vaughan,
Moor 599.

If they eat or drink before or after they are agreed of their Verdict, if before they bring it in, they are to be fined; only with this Difference, That if they eat at their own Charge, the Verdict shall stand; but if at the Charge of the Party, it shall be set aside.

Some of them have been fined for having Figs and Pippins in their Pockets, though they did not eat them. 1 Leon. 133.

Metcalf and
Dean, Cro.
Eliz. 189.

If after they are gone from the Bar, one of the Jury calls a Witness, who was sworn, and had given his Evidence in Court, and desires him to repeat it again, which he did; this is a Misdemeanor, and the Verdict shall be set aside.

King and Burdet, 2 Salk. 645.

The Jury after they were gone from the Bar sent for an Act of *Common Council* given in Evidence; this was adjudged irregular, but not to set aside the Verdict; 'tis not like the *Lady Ive's Case*, where the Jury took a Map of one Side, which was not given in Evidence on either Side: 'Tis true this Act of *Common Council* was an Act of neither Side, but it was Evidence on both Sides; if a Jury eat at their own Charge, 'tis an Offence and finable, but the Verdict shall stand; but if at the Charge of either Side, and the Verdict is found accordingly, it shall be set aside.

Dent against
The Hundred
of Hertford,
2 Salk. 645.

The Foreman of the Jury declared that the Plaintiff should never have a Verdict, let him produce what Evidence he would, and upon *Affidavit* made of this Matter, a new Trial was granted.

An Attorney was turned over the Bar, for giving Direction to the Sheriff what Persons he would have returned of a Jury.

Challenge of
no Freehold,

It hath been held, That no Freehold was not a good Challenge to a Juror at Common Law.

That if such Challenge was good, yet not in Treason; and if it should be admitted to be good in Treason, it must be where the Trial is in a County at large, and not in a City and County; and if in a City, yet not in *London*.

But there is no Resolution, that this is a good Challenge at Common Law in any capital Matter, 'tis a good Challenge in Civil Affairs, and no Reason can be shewed why not in Criminal.

'Tis no Objection to say, That the *Venire facias* mentioned no Freehold before the Statute 35 H. 8. c. 3. for though this be true, yet it always expressed, That the Jurors should be *probi & legales homines* (good and lawful Men); which Words import they must be Freeholders, because *legales* (lawful) implies, they must be qualified by Law; and *homines*, who

who are meant, viz. Freeholders; for *Homines de Comitatu* are Freeholders of the County; and no other Men are considered in Point of Trust.

By 3 Geo. 2. c. 25. §. 18. Any Person having an Estate in Possession of 20 *l.* a Year above the reserved Rent, such Estate being held by Lease for 500 Years, or for 99 or more determinable upon Lives, may be impanelled to serve on Juries in like Manner as Freeholders may be impanelled.

Vide 4 Geo. 2. c. 7. 6 Geo. 2. c. 37.

The Justices Precept to the Sheriff to return a Jury.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Suffex, Greeting: We command you, that you do not omit, by reason of any Liberty within your County, but that you enter therein, and cause to come before our Justices assigned to keep our Peace in the said County, at L. in the said County, on the 8th Day of July next ensuing twenty-four honest and lawful Men of the Hundred of L. to hear and do those Things, which on our Behalf shall be then and there enjoined them; and do you then have there this Precept. Witness Sir T. P. Bart. at L. the 1st Day of May in the 9th Year of our Reign.

Vide Challenges ante.

Justice of Peace.

IT is agreed by all Writers on this Subject, that there were *Conservators of the Peace* at Common Law; but there are several Opinions concerning the Original of Justices of the Peace.

Polydore Virgil tells us, That they began under *William* the Conqueror; and my Lord *Coke* says, that in *Easter Term*, 6 Ed. 1. *prima fuit institutio Justiciariorum pro Pace conservanda* (the first Institution of Justices was to keep the Peace). Mr. *Pryn* animadverting upon him, shews that *Henry 3.* after the Agreement made between him and the Barons, did constitute Guardians *ad Pacem conservandum* (to keep the Peace). But the learned Sir *Henry Spelman* was of a contrary Opinion, viz. That they were made by Ed. 3. in the Beginning of his Reign, on Purpose to suppress Commotions which

M m 4

might

might happen upon the Dethroning *Ed. 2.* and being appointed by the King's Commission in every County to keep the Peace, they were therefore called *Custodes & Guardiani Pacis* (Keepers and Guardians of the Peace). See the Introduction.

4 *Ed. 3. c. 2.*

34 *Ed. 3. c. 1.*

The Number of these Magistrates at first was very uncertain, till a Parliament held 21 *Ed. 3.* the Commons being charged to advise the King how the Peace of the Land might be better kept; their Advice was, That in every County six Persons should have Power by Commission to hear and determine Matters relating to the Peace; of which Number two should be of the best Quality, two Knights and two Men of the Law, and that they should sit four Times in one Year. *Cott. Abridg. 67, 86.*

Neither do I find, that they had any judicial Authority at first; but afterwards they were enabled by particular Statutes to hear and determine Felonies and Trespasses.

36 *Ed. 3. c. 12.*

And for this Reason, two Years afterwards they were by another Statute called Justices of the Peace, which Name continues to this Day.

Number.

But in the Space of threescore Years their Number so increased, that 12 *R. 2. c. 10.* a Law was made, prohibiting that there should be more than six in every County, as at the Beginning of their Constitution; and this Number two Years afterwards increased to eight.

They are now Judges of Record, and have a larger Power than the Conservators had; because they could not commit the Offenders for a Breach of the Peace; but the Justices may send Warrants to bring Delinquents before them to be examined, and may also commit where they see Cause.

This Law is not abrogated at this Day, but the Number of Justices is greatly increased in every County, which made Mr. *Lambard*, above one hundred Years since, complain of the excessive Number; and after him Sir *Henry Spelman* takes Notice, that there are above threescore in each County.

'Tis true, in *Wales* they were but eight in a County; they were confined to that Number by a Clause in the Statute of 34 & 35 *H. 8.* but by a late Act of 5 *Will. & Mar.* that Clause is repealed.

'Tis this which made a late Author liken them to the Order of *St. Michael* in *France*, which at the Institution was desired by Men of the first Quality, there being only Thirty-six in Number; but in a few Years so increased, that it was despised by Men of Honour, and bestowed only upon mean Persons.

So this Court of Justices of Peace, which was once, as my Lord *Coke* observes, such a Form of subordinate Government for the Quiet of the Realm, that if duly executed, no Part of

of the Christian World had the like, hath been composed of such an unsuitable Mixture of Men, that it is become a Subject in Plays, and a Jest in Comedies.

Therefore this Author would have the Number reduced to the old Standard, *viz.* That in each County there should be eight Honorary Justices constituted of Men of the best Quality therein, who should not be obliged constantly to attend the Service any farther than their Zeal for Justice and Love for their Country shall incline them; and eight acting Justices, who should be fit for Business, who should constantly apply themselves to this Attendance, be entitled to a Reward for their Pains, and be subject to Penalties upon any Neglect, without a reasonable Excuse; and that without five, no Sessions should be held.

Among the Petitions made at a Parliament held at York, 8 Ed. 3. this was one (*viz.*) That all Justices of the Peace were to have certain Fees for their Attendance; the Petition was again renewed 36 Ed. 3. and the King answered, he would provide therefore; but what that Fee was doth not appear. *Hill.* 12 R. 2. it was enacted, That they should have 4 s. *per Diem*, for every Day they sat in Quarter-Sessions; and since, by particular Statutes, they are to have also Part of the Forfeitures upon Conviction of Offenders against these Laws; and by the Statute of Labourers, they are to have 5 s. *per Diem*, for every Day they shall sit in Execution of that Act above three Days.

Cotr. Abr. fol.
15, 93. Wages.
12 R. 2. c. 10.
19 H. 7.
5 El. c. 4.

And such Care was then taken to reward those Magistrates, that it was provided by a Statute, *Anno* 14 R. 2. c. 11. that the Names of the Justices, and the Days of their Sitting, should be written in the Indentures of *Escheats* of every Sessions; one Part whereof was to remain with the Sheriff, that he might know to whom the Wages should be paid; and the other with the Barons of the *Exchequer*, that the Sheriff might have Allowance made, &c. in passing his Accounts; and if he neglected or refused to pay the Wages allowed by Law, an Action of Debt would lie against him.

There are at this Day three Kinds of Justices, *viz.* 1st, Three Sorts of Justices. By Act of Parliament, as the Bishop of *Ely*, and his Temporal Steward; and the Archbishop of *York*, and Bishop of *Durham*, and their Temporal Chancellors, *per* 27 H. 8. c. — See Stat. 18 E. 3. c. 2. 2dly, By Charter, as the Mayors and Chief Officers of Cities and Towns corporate: And these the King cannot discharge at Pleasure, but they continue Justices till Death, or a legal Removal. Yet 'tis said the King may grant a concurrent Jurisdiction to others to act with them. 3. And Note; These Charter-Justices may execute all Powers given by Statutes to other Justices of Peace, but have not as large Authority as is usually given to the third Sort, *viz.* Those appointed by Commission. See the Commission *ante* in the Introduction.

The

The Qualifications of Commission Justices are described by several Statutes, *viz.*

How qualified. They must be Men of the best Reputation, the most pre-
 18 Ed. 3. c. 2. valent Men in the County, as they were formerly called, to-
 34 Ed. 3. 1. gether with some Lawyers; they must be substantial Persons,
 2 H. 5. 4. dwelling also in the County; they must be Men of good Go-
 18 H. 6. 11. vernance, and must not be Steward to any Lord, or desire
 12 R. 2. 10. his Office; and they are not qualified unless they have 20 *l.*
per Ann. except Men of the Law.

2 Cro. 643.
 Castle's Case.

And therefore an Indictment was brought against one, be-
 cause he acted as a Justice of Peace, not having 20 *l.* *per Ann.*
contra Pacem, &c. but the Indictment was quash'd, because
 the Time of his Acting was not laid, *&c.* for he might have
 20 *l.* *per Ann.* then, tho' not afterwards. *Roll. Rep. 2 Part*
 247. See the Introduction.

By 5 Geo. 2. c. 18. No Person shall be capable of being
 a Justice of Peace, who shall not have Estate of Freehold or
 Copyhold in Possession for Life or some greater Estate, or for
 Years determinable upon Life, or for a certain Term origi-
 nally created for 21 Years or more, in Lands or Heredita-
 ments in *England or Wales*, of the yearly Value of 100 *l.*
 above Incumbrances.

No Attorney, Solicitor or Proctor to be capable of being
 a Justice of Peace during his Continuance in Practice.

This Act not to extend to City, Town or Liberty, having
 Justices of Peace within their Limits, nor to incapacitate a
 Lord of Parliament his eldest Son or Heir Apparent, or of
 any Person qualified to serve as Knight of a Shire, by 9 Ann.
 c. 5. to be Justice of Peace for any County, nor to the
 Board of Green-Cloth, Commissioners of the Navy, *&c.*
 Under Secretaries of State, nor Heads of Colleges in *Oxford*
 and *Cambridge, &c.*

Person taking upon him the Office or acting as Justice of
 Peace, not being qualified according to this Act forfeits 100 *l.*
 Half to the King, and Half to the Informer.

Of his Power
 in general.

In some Cases 'tis Ministerial, *viz.* On a *Supplicavit* out
 of *B. R.* for taking Surety of the Peace, on the Statute of
Northampton for a forcible Entry, and on a *Certiorari*.

But in most other Cases relating to his Office, he is a Judge
 of Record, for none but such can take a Recognizance for
 the Peace.

In an Action for false Imprisonment, the Defendant justi-
 fied, for that the *Lord Mayor of London* is a *Justice of Peace*,
 and that the Defendant is a *Serjeant at Mace*, according to
 the Custom of *London*; and that *W. R.* Lord Mayor, com-
 manded him to arrest the Plaintiff, which he did, *&c.* Ad-
 judged, that a Justice of Peace cannot command a Man to ar-
 rest another in his Absence without a Warrant, and that the

Serjeant

Serjeant at Mace is not an Officer to the Lord Mayor, as he is a Justice of the Peace, but the Constable. 1 *Brownl.* 204. *Woody's Case.*

By the Statute of 18 *Ed.* 3. c. 2. he hath Power to hear and determine * *Felonies* and Trespasses, and to inflict Punishments. He hath the like Power by 43 *Ed.* 3. c. 1. and likewise by R. 2. c. 10. he hath Power to proceed to the Deliverance of Thieves and Felons.

*And therefore had Power to inquire of Murder, because 'tis Felony. *Dyer* 69.

Now though these Statutes do enlarge their Power, yet because by a subsequent Law, (*viz.* 1 & 2 *P. & M.* c. 13.) they are to certify the Examinations in Homicide and Felony to the Justices of Gaol-delivery, therefore the Sessions do not proceed to determine great Felonies; but for Petty Larceny, and other small Felonies, they usually try Offenders, or they may proceed in any Case where a Felony is by any Statute limited to be heard before them.

And generally in all Cases they may take the Examinations, and commit the Offenders, and bind over the Prosecutors to the Assizes, and certify their Proceedings, it being incident to the Office of a Justice of the Peace to commit, as the *Conservators* of the Peace did at Common Law, for they have no Authority to do it by any express Words in their Commission; and it was the Opinion of *Hale Ch. Justice*, that if he directs his Warrant to a private Person, he may execute it.

The Defendant was committed by a Warrant of a Justice for being a *notorious Owlver and Smugler*, and was afterwards indicted for this Fact, and being still in Custody, he brought an *Habeas Corpus*, and moved to be discharged.

(1.) For that he had been in Gaol two Terms since the Indictment was found, and not brought to his Trial.

(2.) The Charge in the Warrant of Commitment was very loose, (*viz.*) *For being a notorious Owlver and Smugler*, which is not a sufficient Charge to deprive a Man of his Liberty, especially in a criminal Cause where the utmost Certainty is required.

Adjudged that the Defendant ought to be tried within two Terms after his Commitment, otherwise he must be discharged according to the *Habeas Corpus Act*.

But Justices of Peace must take Care, that they have such an Information of the Fact as may be sufficient to support a Warrant of Commitment, but it need not be set forth in the Warrant itself, because so much Certainty is not required in Warrants as in Writs and Pleadings, which are always on Record. *Mich.* 1721. *The King versus Walter.*

The Defendants were indicted for not producing the Parish Books before Justices of Peace, who are appointed by the Sessions to examine and make Orders thereon, and to commit for disobeying such Orders, but the Indictment was quash'd, *Queen and Glyn, 6 Mod.* 87.

quash'd, for tho' the Sessions may refer the Examination of the Fact to a certain Number of Justices, yet they cannot delegate the Power of making Orders.

Hale Cb. Just. was not satisfied the Examination of the Fact could be referred, they being all Judges of Fact.

Moor 187.

Where a new Commission is made to Justices of Peace, out of which some of the Justices in the Old Commission were omitted, yet they have Authority to Act, and what they do is lawful, till the next Sessions, at which the new Commission is published.

2 Roll. Rep.
78.

Where he hath a Jurisdiction, his Warrant is not to be disputed by any Constable, who may be indicted for not executing it; *contra* where he hath no Jurisdiction, for there the Officer is punishable if he executes the Justice's Warrant. *Trin. 7 Annæ, C. B.*

He may take a Recognizance (for the Peace, &c.) which is a Matter of Record, and which none can do but a Judge of Record.

In some Cases, as in *Force, Riots, Presentments of Highways*, his single Testimony is of greater Authority than an Indictment of a Jury.

But in his own Case he is not Judge, and ought not to execute his Office, unless he is assaulted, and then he may commit the Offender; he may likewise record a forcible Entry upon his own Possession.

He shall not be punished for any Thing done by him in Sessions as a Judge.

When he justifieth the Fact done by him as a Justice of Peace, he need not set forth his Commission, because he is a Judge of Record, and his Commission remaineth with the *Custos Rotulorum*.

If any Man abuseth him, an Indictment will lie against the Offender, as calling him Bufflehead, &c.

King and

Mayo, Sid. 144.

That is, if the Abuse be in any Thing relating to his Office, as where an Order was affirmed upon an Appeal, and the Party in Anger said, *If I cannot have Justice here, I will have it elsewhere*; he was indicted for his Contempt, and fined by the Justices 5 *l.* and committed for Non-Payment; and this was held lawful: 'Tis true, Justice *Twisden* was of a contrary Opinion, *viz.* That the Words were not spoken in Contempt, but by Way of Appeal to another Court, and did not accuse the Sessions of Injustice; but this is a strain'd Construction of a plain Sentence.

And as they are favoured by Law in the Execution of their Office, so they are punished for any Irregularities.

King against
Sir Turbeck
Temple, Sid.
192.

As for Instance: An Information was brought against a Justice of Peace for compounding Recognizances, and not returning them to the Sessions; and for taking 20 *s.* for every unlicensed Ale-house, and converting it to his own Use; he was

was fined a thousand Marks, and imprisoned during the King's Pleasure, was to find Sureties for his Good Behaviour for a Year, and to acknowledge his Offence at the next Assizes. Reporter makes a *Quare* in relation to the Recognizance.

A Justice of Peace sent a Servant to the House of Correction on Complaint of the Master, for that he was saucy, and gave his Horses too much Corn; and this being held not to be a sufficient Cause for the Justice to send the Servant thither, an Information was filed against him by Leave of the Court. *Pasch. 1722. The King versus Okey.*

He may persuade an Agreement between the Parties for small Trespasses, but not where the King is to have a Fine. Noy 103.

He may send his Warrant to apprehend any Person accused of Felony, tho' the Accusation should be false, but not unless accused. 1 Leon. 187.
Cro. Eliz. 130.

But one or more Justices cannot make a Warrant, on a bare Surmise, to break open any House to search for a Felon, or stolen Goods, &c. 4 *Inst.* 177.

Nor can he bind over an Offender against a Penal Law, unless he be first indicted. Nor imprison any but in the common Gaol. 9 *Co.* 119. Lord *Sancbar's* Case.

Justices may inquire of such Trespasses, whereupon any Man may have an Action of the Case, as for a Nuisance, Trespass, Deceit, &c. *Fitz. Justice*, 12. *b.*

One Justice, &c. cannot commit another for a Breach of the Peace; the Sessions may. But,

They cannot hold Cognizance of Pleas upon Penal Statutes without an express Power given to them by those Acts; and without such Authority, the Indictment, if taken, will be void.

If a Justice for any County at large shall dwell in a City that is a County of itself, and within the County at large, for which he shall be appointed a Justice, though not within the same County, he may grant Warrants, take Examinations, &c. at his own Dwelling house (tho' it be out of the County where he is authorized to act as a Justice; and in some City or Precinct adjoining, that is a County of itself) and such Acts of the Justice, and of the Peace-Officers in Obedience to any such Warrant, shall be good in Law, though it happen to be out of his Limits. 9 Geo. 1. c. 7.

Provided, That nothing in this Act shall give Justices of the County Power to hold their Quarter-Sessions in Cities that are Counties of themselves; nor Peace-Officers of the County at large to intermeddle in any Matters arising within such Cities or Towns.

By the Death of the King, by a Discharge under the great Seal, by a *Supersedeas*, by granting a new Commission, by Accession of another Office, as being made Sheriff or Coroner. How his Power is determined.
Dalton 12. 234.

Justice of Peace.

Coroner. But see *Mo.* 187. That the Acts of the old Justices are lawful till the new Commission is published at the Sessions or Assizes. And *Note*; The Office of Sheriff only suspends his Office of Justice, but that of Coroner extinguishes it.

Note also; The Authority of all Officers chose by the People, (by the King's Writ, or otherwise), as Conservators, Coroners, Constables, Verderors, &c. as also Mayors, Recorders, and Corporation Justices, are not determined by the King's Death or Demise.

I shall conclude this Title with mentioning in what Cases Justices of Peace have been fined and punished.

Bail.	{ Bailing one not bailable, and refusing to bail where bailable, fined and to pay double to the Prisoner. 3 <i>Ed.</i> 1. 15; 23 <i>H.</i> 6. 10.
Correction-House.	{ For neglecting to take Order about a House of Correction, fined 5 <i>l.</i> towards the Building it. 1 <i>Jac.</i> 1. c. 4.
Forcible Entry.	{ For not executing the Statutes of Forcible Entry, fined 10 <i>l.</i>
Indictment.	{ Imbezilling, wilfully razing it, changing a Trespass into a Felony, fined and imprisoned.
Juror.	—Threatning a Jury-man to present any Thing.
Oath.	—Executing his Office before he took it.
Peace.	{ Refusing to take Surety of the Peace when tender'd.
Riots.	{ For not executing the Statutes against Riots, fined 100 <i>l.</i>
Records.	—Imbeziling or razing them.

Justices of Peace of the County of *Anglesea* may adjourn the Quarter-Sessions for the said County from Time to Time, to any Part of the County, for the Ease and Benefit of those who are obliged to take the Oaths to the King, but for no other Purpose. *Stat.* 1 *Geo.* c. 25.

It having been determined in a late Case in *B. R.* That Justices of Peace could not act in Parishes or Places, to the Rates of which they were chargeable; It is now enacted by 16 *Geo.* 2. That it shall be lawful for every Justice, &c. to make, do and execute all and every Act, Matter or Thing appertaining to their Office as Justice of Peace, so far as the same relates to the Laws for the Relief, Maintenance and

Justice of Peace. Lamps.

Settlement of poor Persons; for passing and punishing Vagrants, for Repair of the Highways; or to any other Law concerning Parochial Taxes, Levies or Rates, notwithstanding such Justice is rateable to or chargeable with the Taxes, &c. within any such Parish, Township or Place, affected by any such Act of such Justices.

No Act, Matter or Thing, done, made or executed before the Making this Act by any such Justice, shall be hereafter quash'd or declared void, because made, &c. by such Justice so rated and chargeable.

Provided that this Act shall not impower any Justice of Peace for any County or Riding at large, to act in the Determination of any Appeal to the Quarter-Sessions from any Order, Matter or Thing relating to any such Parish, Township or Place where such Justice is so charged, taxed, or chargeable as aforesaid.

Per Holt, Ch. Just. Where Authority is given to two Justices of Peace to do any Act, the Sessions may do it in all Cases except where Appeal is directed to the Sessions. *1 Raym. 426.*

Recds. See Coals.

Lamps.

BY 9 Geo. 2. c. 20. §. 1. 'tis enacted, That such a sufficient Number of Glass Lamps of such Fashion, and put up in such Places of the City of London and Liberties thereof, as to the Mayor, Aldermen and Commonalty, in Common Council assembled, shall seem meet, shall be with convenient Speed fixed and kept burning, from Sun-setting to Sun-rising throughout the Year.

Every House, the Rent whereof is under 10 *l.* and the Inhabitant is charged to Church and Poor, to be assessed any Sum *not exceeding* 7 *s.* a Year. Sect. 1.

If 10 *l.* and under 20 *l.* (not exceeding) 12 *s.* a Year.

If 20 *l.* and under 30 *l.* (not exceeding) 14 *s.* a Year.

If 30 *l.* and under 40 *l.* (not exceeding) 16 *s.* a Year.

If 40 *l.* or upwards (not exceeding) 20 *s.* a Year.

St. Paul's Cathedral, and all other publick Buildings, to be yearly assessed, to be paid by the Dean and Chapter of St. Paul's, and by the Church-wardens, &c. of other Parishes, and by the Heads of Meeting-houses, &c. Yet the Dean and Chapter of St. Paul's may be excused paying, if they light Sect. 4.
Sect. 5.
round

round the Fence of *St. Paul's Church*, in the same Manner the City is lighted.

Sect. 6.

Upon any Grievance an Appeal (within twenty Days after the Tax laid) lies to the Lord Mayor and Court of Aldermen, whose Decision shall be final.

Sect. 7.

The Chamberlain shall pay for Waste Grounds.

Sect. 8, 9.

The Alderman of each Ward, with the Consent of his Deputy and Common Council, are to nominate two or more substantial Inhabitants to be Collectors of this Tax, who are to account at the Wardmote on or near *St. Thomas's Day*. And the Deputy and Common Council-Men in each Ward are to return six Inhabitants, out of which the Collectors are to be chosen; and the Person refusing to act forfeits 10 *l.* and is liable to be chose the next Year; and upon Refusal again forfeits the like Penalty, and so *toties quoties*.

Sect. 10.

Sect. 11.

A Reassessment to be laid on the Inhabitants in Case of any Imbezilment, and for Non-payment the Collectors may distrain by a Warrant from the Lord Mayor, or Alderman of the Ward; the Collection is to be made half-yearly, and paid to the Chamberlain in such Manner, that no Collector shall have 50 *l.* in Hand ten Days, on Forfeiture of 5 *l.* the Chamberlain's Receipt to be produced on stating the Account, and shall be a sufficient Discharge.

Sect. 12.

Sect. 13.

Freemen not paying the said Assessments shall be incapacitated from voting at Elections.

Sect. 14.

The Alderman of each Ward, with the Consent of his Deputy and Common Council, may contract for setting up and trimming the Lamps for one Year; but such Contract must not exceed the Sum appointed by the Mayor, Aldermen and Common Council, and the Chamberlain is to pay all Draughts made on him by the Alderman of each Ward, with Consent, &c. and is to enter them distinctly in a Book to be inspected by the Citizens without Fee.

Sect. 16.

Sect. 17.

Maliciously breaking or extinguishing the Lamps, on Conviction by the Oath of one or more Witnesses, before any Justice or Justices for the City, for the first Offence forfeits 40 *s.* for each Lamp, the second 50 *s.* and for the third 3 *l.*

Sect. 18.

Surplus Money, after seven Years, shall be applied to the Aid of the Orphans Fund, or in Abatement of future Assessments, or as the Common Council shall direct.

Sect. 2.

Sect. 19.

The Common Council to be held soon after *Midsummer 1736*. are to order a Rate to be made, to commence from 25 *March* last, and to continue till the 25th of *December* following, and yearly between the first of *January* and last Day of *February*, shall order what Rates shall be made on the Inhabitants for the Purposes aforesaid, which shall be for one whole Year, commencing the 25 *December* preceding the said Order.

Collectors refusing to account at the Wardmote on or near *St. Thomas's Day*, forfeit 5 *l.* and the like Sum of 5 *l.* for every 20 Days they detain their Accounts. Sect. 20.

Warrants for Distress, in Case of Refusal or Non-payment, are to be granted by the Lord Mayor or Alderman of the Ward. Sect. 21.

The Lord Mayor, or any two or more Justices, may hear and determine Offences, which are made subject to any pecuniary Penalties, upon Complaint within ten Days after the Offence committed, and may summon the Party and the Witnesses, &c. and upon Conviction, may issue a Warrant to levy the Penalty on the Goods and Chattels of the Offender, and to cause Sale thereof, if not redeemed in five Days; and, if no Distress can be found, may commit the Offender to the House of Correction for any Time not exceeding three Months, or until such Penalty shall be paid; and such Justices may mitigate the Penalty so as not to remit above one Moiety; the Party aggrieved may appeal to the Quarter-Sessions, who are finally to hear and determine the same, &c. all Penalties to be applied one Moiety to the Informer, and the other to the Alderman of the Ward, to be by him paid over to the Chamber of *London*, as Part of the Fund for maintaining such Lights. Sect. 22.

Sect. 23.

Sect. 24.

Sect. 25.

All Actions brought against any Person for any Thing done by Virtue of the said Act, shall be commenced within six Months, and be laid in *London*; to which Defendant may plead the General Issue; and if any ways for him, shall have treble Cost. The Act is declared a Publick Act. §. 27. Sect. 26.

A Warrant to distrain for the Assessment, according to the said Stat. 9 Geo. 2.

To, &c.

London, to **W** Hereas Complaint hath been made unto me, wit, That J. O. of, &c. being duly assessed in the Sum of twelve Shillings, for and towards the defraying the Expence of Lighting the City of *London*, pursuant to the late Act of Parliament in that Behalf made and provided, hath and doth neglect or refuse to pay the same, as by Law he ought: These are therefore to command you, that forthwith you or one of you do levy the said Sum of twelve Shillings upon the said J. O. by Distress and Sale of his Goods, rendering to him the Overplus, if any, after a Deduction of reasonable Charges of the Distress. Given, &c.

A Warrant to levy the Sum of 40 s. for maliciously breaking a Lamp.

To, &c.

London, to **W** Hereas it appears unto me, upon the Oath
writ, of A. B. of, &c. That C. D. of, &c. did
on the Day of this Instant, maliciously break, or throw
down and extinguish [as the Case happens] one of the Lamps
set up in the Ward of, &c. for Lighting the City of London,
pursuant to the late Act of Parliament, in that Behalf made
and provided, by reason whereof he hath forfeited the Sum of
40 s. These are therefore to command you, that forthwith you
do levy the said Sum of 40 s. upon the said C. D. by Distress
and Sale of his Goods and Chattels (if the same are not re-
deem'd within five Days), and that you do pay the one Moiety
thereof unto the said A. B. who first informed me thereof, and
the other Moiety unto Sir Francis Child, Knight, and Alderman
of the Ward, where the said Offence was committed, to be by
him paid over into the Chamber of London, as Part of the
Fund for maintaining such Lights; and in Default of such Di-
stress, that then you certify the same to me. Given, &c.

The Form of a *Mittimus*, where a Dis- tress cannot be found.

To, &c. and to, &c.

London, to **W** Hereas C. D. of, &c. hath been convicted
writ, before me, upon the Oath of A. B. of, &c.
of maliciously breaking, or throwing down and extinguishing
one of the Lamps, set up in the Ward of, &c. for Lighting the
City of London, pursuant, &c. by reason whereof he forfeited
the Sum of 40 s. and thereupon a Warrant was directed to the
Constable of, &c. under the Hand and Seal of, &c. to levy the
same by Distress and Sale of the Goods of the said Offender:
And whereas it appears unto me, that the said C. D. hath no
Goods and Chattels, upon which a Distress may or can be made,
I do therefore herewithal send you the Body of the said C. D.
commanding you to receive him into your Custody, there to be
kept to hard Labour for the Space of one Month, or until the
said 40 s. shall be paid. Given, &c.

Landlord

Landlord and Tenant.

BY the Act 11 Geo. 2. for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants, 'tis enacted, That if any Tenant for Life, Years, at Will, Sufferance, &c. fraudulently conveys away his Goods from the Premises, to prevent the Landlord's Distress, that the Landlord within thirty Days may follow the Goods and seize them as a Distress, and dispose of them as if they had been actually distrained on the Premises, unless they are sold for a valuable Consideration to a Person not privy to the Fraud.

Tenant fraudulently removing, and every Person wilfully and knowingly assisting him in removing or concealing such Goods, shall forfeit double the Value of the Goods so removed and concealed, to be recovered by Action of Debt, &c.

If the Goods don't exceed the Value of 50 *l.* then the Landlord, his Bailiff, Servant or Agent may exhibit a Complaint in Writing against the Offenders before two or more Justices of Peace of the same County, Riding or Division of such County, residing near the Place whence such Goods and Chattels were removed, or near the Place where the same were found, not being interested in the Lands or Tenements from whence they were removed.

And then Power is given them to summon the Parties concern'd, to examine the Fact and all proper Witnesses upon Oath; if Quakers, upon their Affirmation; and in a summary Way to determine whether the Parties are guilty of the Offence with which they are charged, to inquire of the Value of the Goods respectively fraudulently carried off and concealed; and upon full Proof of the Offence, by Order under their Hands and Seals to adjudge the Offenders to pay double the Value of the Goods to the Landlord, &c. at such Time as the Justices shall appoint.

If the Offenders, having Notice of the Order, refuse or neglect to do it, they are to levy it by Warrant of Distress and Sale of their Goods and Chattels; for Want of Distress the Offenders to be committed to the House of Correction, to be kept to hard Labour without Bail or Mainprize for six Months, unless the Money order'd to be paid shall be sooner satisfied.

Appeal is given from the Order of the two Justices to the Justices of the Peace at their next General or Quarter Sessions, who are to hear and determine such Appeal, and give such Costs to either Party as they shall think reasonable.

Landlord and Tenant.

'Tis likewise provided, that where the Party appealing shall enter into a Recognizance with one or two sufficient Surety or Sureties in double the Sum order'd to be paid, conditioned to appear at the General or Quarter Sessions, the Order of the two Justices shall not be executed against him in the mean Time.

By the same Act Landlords are empower'd, with the Assistance of a Constable or other Peace Officer, &c. to break open any House, Barn, Stable, Out-house, Yard, Close, or Place in which such Goods are locked up and secured to prevent their being distrained in the Day-time, and to seize, &c. such Goods, &c. as if they had been in an open Field or Place: In Case of a Dwelling-house, Oath being first made before some Justice of Peace of a reasonable Ground to suspect that such Goods or Chattels are therein.

By the same Act there is a Provision for the Landlords when the Tenants desert the Premises. If any Tenant holding any Lands, &c. at a Rack-rent, or when the Rent reserved shall be full three Fourths of the yearly Value of the demised Premises, who shall be in Arrear for one Year's Rent, shall desert the demised Premises, and leave them uncultivated or unoccupied, so that no sufficient Distress can be had to countervail the Arrears of Rent; Two Justices of the Peace of the County, &c. not interested in the demised Premises, at the Request of the Lessor, his Bailiff or Receiver, shall go upon and view the same, and affix on the most notorious Part of the Premises Notice in Writing what Day (at the Distance of fourteen Days at least) they will return to take a second View; and if the Tenant or some Person on his Behalf shall not appear on the second View, and pay the Rent in Arrear, or there shall not be sufficient Distress on the Premises, then the Justices may put the Landlord into Possession of the demised Premises, and the Lease to such Tenant, as to the Demise therein contain'd only, shall from thenceforth become void.

Such Proceedings are examinable in a summary Way by the next Justice of Assize of the respective Counties where the Premises lie; if they lie in *London* or *Middlesex*, by the Judges of *King's Bench* or *Common Pleas*; if in the Counties Palatine, before the Judges thereof; if in *Wales*, before the Court of Grand Sessions, who are respectively empower'd to order Restitution to the Tenant with Expences and Costs to be paid by the Landlord, if they shall see Cause for the same; and if they affirm the Justices Acts, to award Costs, not exceeding 5 *l.* for the frivolous Appeal.

Larceny Petty.

IT is a Felonious Taking and Carrying away the personal Goods from another, not from his Person, nor out of his House, and not exceeding the Value of 12 d. *Hal. P. C. 60.*

If it is to the Value of 12d. 'tis Grand Larceny, which only differs from Petty Larceny in the Value of the Thing taken.

In this Definition, these Things are to be considered ;

1. Who may be guilty of this Offence.
2. What shall be accounted a Felonious Taking, and where.
3. What shall be a Carrying away.
4. What are the personal Goods of another, and what not.
5. The Value.

As to the first, Infants under fourteen, and married Women, may be guilty, &c. but if a *Feme Covert* taketh the Goods of the Husband, and delivereth them to another, 'tis not Felony in the Receiver.

Who may be guilty, *Hal. P. C. 61. Kitch. 25. B.*

'Tis likewise an Excuse to her, if she commit Felony by the Command of her Husband, if both are in the same felonious Act ; but 'tis no Excuse in a Servant by the Order of his Master.

Hal. P. C. 65, 66.

There must be an actual Taking, and therefore the Indictment is always, *quod felonice cepit & assortavit* or *abduxit* (that he feloniously took and carried or led away), for if it be *quod abduxit* (that he led away) only, 'tis nought ; and therefore, if Goods are found, and afterwards converted *animo furandi* (with a Mind to steal), 'tis not Felony.

What is a felonious Taking, &c. *Hal. P. C. 61.*

If a Man hath the Possession of Goods by Delivery, as a Carrier, who imbezils them, 'tis no Felony, unless the Privy be determined ; that is, if by Agreement the Goods were to be carried to such a Place, and afterwards the Carrier takes them *animo furandi* (with a Mind to steal) ; or if the Carrier opens the Pack, and takes out some Goods *animo furandi*, 'tis Felony.

H. P. C. 61, 62.

But in some Cases, though the Party hath the Goods by Delivery, yet 'tis Felony to go away with them ; as if a Shop-keeper deliver Goods to a Person pretending to buy them, and he runneth away with them, 'tis Felony ; for the Goods were not properly out of the Possession of the Owner by his Delivery, but by completing the Contract which was then begun ; and the Running away shews the Intention of the Party, by coming into the Shop (*viz.*) to get the Goods into his Possession *animo furandi* (with a Mind to steal).

Raym. 275.

Hal. P. C. 61.

But Felony may be committed by a Person who hath the Charge or Use of a Thing, as a Shepherd of his Sheep; or a Guest of Plate brought for his Use in an Inn.

Hal. P. C. 63.

It may be committed by making Use of the *Process* of the Law to obtain Goods, viz. By obtaining a *Replevin* where a Man hath no Property, and by that Means get a Horse delivered to him, this is a felonious Taking; so by getting Goods out of an House upon an Ejectment, where he hath no Title. *Sid.* 254. *King* and *Farr*.

What is a Carrying away.

A Guest removes Goods out of his Chamber, and is taken before he gets out of the Inn; or taking a Horse with an Intent to steal, but is apprehended before he can get out of the Ground where he was departing, is so; but riding away with a Horse lent is not *Larceny*. *Dalt.* 367. *Hal. P. C.* 64.

What are the personal Goods,

Hal. P. C. 67.

A Man who hath a Property only *pro tempore* (for a Time) as a Bailiff, if Goods are taken away from him, 'tis Felony.

Hal. P. C. 67, 68.

Stealing a Bond is Felony, because 'tis a Thing in Action.

Taking Fish in a Trunk or Pond is Felony, because they are deprived in these Places of their natural Liberty; so Taking Swans kept in a Pond or private River.

Hal. P. C. 68.

Things which have been *feræ Naturæ* (of a wild Nature), if made Tame, are personal Goods; as Conies, Deer, Partridges, Pheasants, 'tis Felony to steal them, knowing them to be tame.

Hal. P. C. 68.

So where a Man hath a Property *ratione impotentiae* (by reason of Impotency), in Things which are wild in their Nature, as young Hawks or Pigeons in their Nests, 'tis Felony to steal them.

Hal. P. C. 68.

So 'tis to take Things which are *domitæ Naturæ* (of a tame Nature), as Ducks, Hens, Turkeys, &c. Horses, Colts, &c.

15 Jac. 1.
Nottingham's
Case, contra
Hal. P. C. 67.

To steal the Shroud of a Person buried is Felony; for it is *bona Executorum* (the Goods of the Executors): *Quare*.

Wrecks, Waifs and Estrays before Seizure; Fish in a River, Conies in a Warren; for a Man hath no Property in them but *ratione loci* (by reason of the Place)

Hal. P. C. 66.

Corn or Grass growing, Apples growing, taking Lead off a Church.

Hal. P. C. 66.

Things of a base Nature, as Dogs, Foxes, Monkeys, Parrots, Ferrets; these and such like are not personal Goods, and so no Felony to take them.

What not the Value of 12 d. or under,

If the Indictment be for taking Goods to the Value of 12 d. and the Jury find only to the Value of 10 d. 'tis Petty Larceny.

Hal. P. C. 70.

If several small Matters are taken from the same Person at several Times, and all amounting to more than 12 d. they may be put into one Indictment; and the Offender being found guilty, shall have Judgment of Death.

The

The Judgment in this Offence is to be whipped, and forfeits his Goods. Hal. P. C. 70.

A Wife stealing by Compulsion of her Husband; otherwise, if not constrained; but if she commit Murder by her Husband's Consent, 'tis Felony. Who are not Felons, Hal. P. C. 65.

They steal Goods together, 'tis Felony in the Husband alone; but if she steals her Husband's Goods, or receive him, being a Felon, she is not guilty as a Felon in the one Case, or as Accessary in the other.

Leather.

THE Statute which chiefly concerns the Ordering of † Enforced by Leather, was made † *Anno 1 Jac. 1. c. 22.* which 9 *Annæ, c. 71.* may be divided in these Particulars:

Concerning	{	Bark,	Shoemaker,
		Hides,	Searchers, &c.
		Tanner,	Sealers of Leather,
		Currier,	Triers,
		Leather tanned,	Forfeitures,
		Leather curried,	Exportation.

This must not be engrossed, the Forfeiture is double the Value.

Oak Trees, fit for Barking, when the Bark is worth 2 s. per Cart-Load, must not be sold but between the first of April and the last of June, except for necessary Repairs of Houses, Mills or Ships: Forfeiture, viz. the Trees, or double the Value.

Gashed by the Butcher, or by the Currier in shaving, Forfeiture to the Party grieved twice as much as the Loss. Hides.

Note; This is altered in some Particulars by 9 *Annæ, c. 11.*

Spoiled or impaired, forfeits 6 s. 8 d. and the Value of the Hide or Skin.

Gashed by the Tanner or Butcher, forfeits 20 d. per Hide.

Water'd, except in June, July, or August, forfeits 3 s. 4 d. per Hide.

Put to Sale, being putrified, like Forfeiture.

Must not be bought rough in the Hair, except by Tanners, (other than Salt Hides, for the Use of Ships); forfeits the Hides, or the just Value.

Tanned Leather must not be bought but in Fairs and Markets, forfeits 6 s. 8 d. per Hide. *Vide plus ibid. 1 Jac. 1. cap. 22.* Tanner.

Must serve seven Years Apprentice, or be a hired Servant to the Trade, or must be a Widow; or Children of a Tanner, having a Tan-fat left them, and been brought up in the Trade for four Years: Forfeiture is all the Leather tanned, or Value thereof.

He must not over-lime Hides, or use any Thing but the Bark of Ash or Oak, Culver-dung or Hen-dung, Lime, Malt, Meal, Tapwort: Forfeiture is every Hide otherwise tanned and put to Sale, or the Value thereof.

Suffering Hides to be frozen, or to be parched with Fire or Sun, like Forfeiture.

Tanning rotten Hides, not continuing Sole-Leather twelve Months in the Woozes, and Upper-Leather nine Months; or negligent working Hides in Wooze, and not renewing and strengthening them, forfeits every Hide so tanned and put to Sale, or full Value thereof.

Raising Hides for Sole-Leather by any Mixtures, forfeits the same.

Must not hasten the Tanning by unkind Heats with hot Wooze, forfeits 10 l. and stand in the Pillory three Days in next Market-Town.

Using the Trade of a Shoemaker, Currier, Butcher, or any Artificer cutting or working Leather, loseth the Hides and Skins tanned.

Currier.

Must not curry a Hide or Skin which is not well tanned, and dried in his own House, situate in some Market or Corporate Town, and not elsewhere.

Must not use the Trade of a Tanner, Butcher or Shoemaker, or any other Artificer, who uses cutting Leather, forfeits for every Hide 6 s. 8 d.

Refusing to curry Leather within eight Days in Summer, and sixteen Days in Winter, after he shall or may take it in Hand, forfeits for every Hide not curried 10 s.

Warden of the Company, or Officer by him appointed, shall, within one Day after Request, search and seal curried Leather, for which the Currier is to pay 1 d. per Dicker; the same for six Dozen of Calves-Skins; he forfeits for every Hide not sealed and searched 6 s. 8 d.

A Currier in London not currying Leather well, forfeits the Value; a Currier buying tanned Leather, and currying it, and selling it to Shoemakers not cut out and made into Wares, is punishable. 1 Cro. 425.

Leathertann'd.

Being unwrought, shall not be bought but by those who make it into Wares; but Artificers may buy every Monday in *Leaden-Hall Market*, being first searched, sealed and register'd.

Jones 463.

An Information was brought upon this Paragraph of the Statute, against a Currier for buying and selling tanned Leather not made into Wares; and it was found, that he bought Hides

Hides which were tanned, and that he shaved, coloured and glazed the Leather, and sold it; and this was held to be within the Statute, because this Operation was not a Making it into Wares.

Red and unwrought shall not be sold but in Markets, &c. unless sealed and searched in some Market before, nor shall any Leather be exposed to Sale before sealed and searched: Forfeiture 6 s. 8 d. per Hide, and for a Dozen of Sheep or Calves Skins 3 s. 4 d. besides the Hides and Skins, or full Value.

Not sufficiently dried and tanned and put to Sale, forfeits the Whole.

Red Leather brought within the Jurisdiction of *London*, must be carried to *Leaden-Hall*, and there searched; being sold before it is searched, forfeits the same, or the Value thereof.

Red and unwrought must not be bought and sold before it is register'd, forfeits the Value.

Leather shall not be put to be curried by any Artificer in *London*, or three Miles thereof, but to some Person free of the Company of Curriers in *London*, forfeits the same or Value thereof. Leather curried.

Curried Leather must be searched and sealed within the Jurisdiction of *London*, and three Miles thereof, before it is used, forfeits 6 s. 8 d. per Hide, besides the Value of the Hide.

Must make Boots and Shoes of good Leather, sew them well, and not sell on *Sundays*, forfeits for every Offence 3 s. 4 d. and the full Value of the Wares sold. Shoemaker.

Masters and Wardens of { Curriers,
Girdlers,
Sadlers,
Shoemakers, Searchers and Sealers.

within the Jurisdiction of *London*, must once a Quarter search and view all Wares made by Persons of their respective Professions, and which are made of tanned Leather, or they forfeit 40 s. per Year for every Year's Default; to be divided between the King and Prosecutor.

They may seize insufficient Wares until tried.

Mayor and Aldermen of *London* must every Year chuse and swear eight expert Men out of some of those four Companies, to be Searchers and Sealers of tanned Leather there, or forfeit 40 s. per Ann. to be employ'd as above-written.

Searchers, &c. refusing to do their Office, or to allow Wares which are really good, forfeit 40 s.

Exacting more than due Fees, forfeit 20 s.

Lawfully chosen, and refusing the Office, forfeit 10 l.

Opposing

Opposing Searchers and Sealers in Execution of their Office, forfeit 5 l.

Information against a Person not being a Tanner, for buying raw Hides, and selling them again, not tanned.

1 Jac. 1. c. 22.
s. 7.

Suffex, to **B**E it remember'd, *That, &c. cometh T. H. who* wit, *prosecutes in this Behalf, as well for our said Lord the King as for himself, and giveth this Court to understand and be informed, That one R. R. of L. in the said County, Shoemaker, on the 17th Day of May last past, before the Exhibiting of this Information, at L. aforesaid in the said County, did buy of divers Persons whose Names are unknown to the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, twenty rough Hides of the Price of six Shilling and eight Pence for each Hide, the said R. R. not being then a Tanner, or a Person, who could lawfully tan the same, which said Hides were not for the necessary Use of Ships, contrary to the Form of the Statute in such Case made and provided, whereby the said R. R. hath forfeited, &c. of lawful Money, that is to say, the just Value of the said Hides; wherefore the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, prays the Assistance of the Court in the Premises, and that the said Forfeiture may be divided into three equal Parts, according to the Form of the Statute aforesaid; and that he the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, may have one Part thereof, according to the Form of the Statute aforesaid, &c.*

Information against one for buying tanned Leather, and not making it into Wares.

1 Jac. 1. c. 22.
s. 8.

Suffex, to **B**E it remember'd, *That, &c. cometh T. H. who* wit, *prosecutes in this Behalf, as well for our said Lord the King, as for himself, and giveth this Court to understand, and be informed, That one T. P. of L. in the said County, Shoemaker, on the 17th Day of May last past, before the Exhibiting of this Information, at L. aforesaid in the said County, did buy of one T. R. Ten Backs of tanned Leather, of the Price of five Shillings for each Back; and that the said T. P. on the 17th Day of May aforesaid in the same Year aforesaid, at L. aforesaid in the said County, did put away the said ten Backs of tanned Leather not wrought and converted into made Wares, contrary to the Form of the Statute*
in

in such Case made and provided; whereby the said T. P. hath forfeited, &c. of lawful Money, that is to say, the Value of the said ten backs of tanned Leather; wherefore the said T. H. who prosecutes in this Behalf, as well for our said Lord the King, as for himself, prays the Assistance of the Court in the Premises, and that the said Forfeiture may be divided into three equal Parts, according to the Form of the Statute aforesaid, and that he the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, may have one Part thereof, according to the Form of the Statute, &c.

Information against a Tanner, for exposing tanned Leather, red and unwrought, to Sale, not in a Fair or Market, &c.

Suffex, to **B**E it remember'd, That, &c. cometh T. H. who
 wit, prosecutes in this Behalf, as well for our said Lord the King as for himself, and giveth this Court to understand and be informed, That one R. R. of L. in the said County, Tanner, on the first Day of June last past, and on divers other Days before the Exhibiting of this Information at L. aforesaid in the said County, did put to Sale, and cause to be put to Sale to one G. E. of H. &c. and to divers other Persons yet unknown to the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, five Hides of tanned Leather, red and unwrought, which said Hides of Leather were not then and there put to Sale by the said R. R. in any open Fair or Market, nor was the same Leather before lawfully searched and sealed in any open Fair or Market, or other Place lawfully appointed to and for the Searching and Sealing of Leather, contrary to the Form of the Statute in such Case made and provided; whereby the said R. R. hath forfeited, &c. of lawful Money, that is to say, the Value of the said five Hides; wherefore the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, prays the Assistance of the Court in the Premises, and that the said Forfeiture may be divided into three equal Parts, according to the Form of the Statute aforesaid; and that he the said T. H. who prosecutes in this Behalf, as well for our said Lord the King as for himself, may have one Part thereof, according to the Form of the Statute aforesaid, &c.

1 Jac. 1. c. 22.
 s. 14.

They must register tanned Leather sold in Markets, &c. with the Prices thereof, and the Names of Buyer and Seller, taking

taking of each 2 *d.* for ten Hides, and 2 *d.* for every fix Dozen of Calves or Sheep Skins.

Triers.

There are fix Persons in *London*, appointed by the Lord Mayor, &c. and in other Places by the Chief Officer upon Oath, within fifteen Days after Seizure, &c.

Persons not appointing, and Triers neglecting their Duties, forfeit 5 *l.* for every Default.

Four of the Triers in *London* shall be removed every Year, and others put in their Room; and none shall be in that Office above two Years, and afterwards shall not be chosen again within three Years: Forfeiture for every Month otherwise continuing in the Office 10 *l.*

Exportation.

By this Act Exportation was prohibited; but by 20 *Car.* 2. c. 5. it was made lawful, paying for every Hundred Weight 12 *d.* Which Act was revived by 1 *W. & M.*

**Forfeitures
how to be di-
vided.**

The Money forfeited by 1 *Jac.* must be divided into three Parts, *viz.* between the King, Prosecutor, and Corporation or Lord of Liberty.

The Value of the Wares, if within the Jurisdiction of *London*, into three Parts, *viz.* between the Seisor, Chamber of *London*, and Poor: And in all other Places, between the Seisor, Head Officer, and to charitable Uses.

Justices of Peace have Power to hear and determine Offences against that Act.

9 Ann. c. 11.

By a subsequent Act 9 *Anna*, c. 11. certain Duties are laid on Leather, but the Act of 1 *Jac.* is enforced and enjoined to be observed in every Thing but what is alter'd; and this Act relates,

- (1.) To raw Hides.
- (2.) To Dressers of Hides, and Makers of Vellum.
- (3.) To the Officers who are to collect the Duty.
- (4.) To the Justices of Peace.

Raw Hides.

First, As to raw Hides and Calves Skins, they must not be gashed, under the Penalty of 2 *s.* 6 *d.* *per* Hide, and 1 *s.* *per* Calf-Skin, one Moiety to the Poor, the other to the Seisor or Informer.

Shaving such Hides or Skins, by which they are impair'd, or the Duty diminished, forfeits them; one Moiety to the King, the other to the Informer.

**Dressers of
Hides, and
Makers of
Vellum.**

Must give Notice in Writing to a proper Officer, of their Names and Places of Abode, of their Tan-houses, Ware-houses, Yards, Mills, Pits, Fats, &c. or the Prices, &c. Forfeiture is 50 *l.* one Third to the King, and two Thirds to the Informer.

Must likewise give Notice of their Place of drying or keeping Hides, and when they take them out of the Mill, must

not

not remove them from the Place where dried, before Entry with the Officer, and marked.

Using any private Tan-yard, and not giving timely Notice to the Officer, of taking Hides out of the Wooze, not making Entries, removing all or any Part, hiding or concealing, forfeits 20 *l.* and the Hides; one Moiety to the King, the other to the Informer.

Not paying the Duties, forfeits double Duty; delivering or carrying out any Hides before the Duty paid, forfeits double Value of the Hides, to be divided as before.

Tanner not keeping just Scales and Weights, or not permitting Hides to be weighed, or neglecting to bring them to the Scale, or to assist in weighing, or removing them before the Duties charged and the Skins marked, not accounting once in three Months, forfeits 50 *l.* to be divided in like Manner.

Not giving an Account of his Stock, like Forfeiture, besides the Stock concealed.

Collar-makers, Bridle-cutters, Glovers and others, who dress Skins or Hides, or Pieces of them, in Oil, Allum and Salt, or Meal or other Ingredients, and who cut and make the same into Wares, and Tawers and Dressers of Leather, are subject to like Penalties.

Must within two Days after Notice make an Entry.

Offices.

Taking any Fee or Reward for any Entry, Account, Permission, Certificate, Mark or Receipt, forfeits 5 *l.* to the Party grieved for every Offence; Conviction to be by two Justices upon Oath, and the Prosecution within three Months after the Offence; but an Appeal lies to the Sessions.

Two Justices may hear and determine Offences against both the said Acts, by summoning the Party accused, and the Witnesses on either Side, and examining them on Oath; but the Prosecution must be within * three Months, and an Appeal lies to the Sessions, and no *Certiorari* shall be allow'd; yet the Justices may mitigate the Forfeiture, so as the Charges of Prosecution be allowed over and above such Mitigation, and so as the Penalty be not reduced to less than a fourth Part.

Justices.

* After Seizure, for the Offence committed.

Note; That Commissioners on this Statute have the same Power as Commissioners of Excise; and all Commissioners and Officers are liable to the same Disabilities and Forfeitures as in 9 & 10 *W. c.* 24.

Statute 10 *Annæ*, c. 26. lays additional Duties on Hides, &c.

10 *Ann. c.* 26.

By the aforefaid Stat. 9 *Annæ*, c. 11. 'tis enacted, That after the Duty is paid, and Entry thereof made in the Officer's Book, he shall cause every Hide and Skin to be marked in such Place as the Tanner desireth; and if removed from the Yard or Drying-place by the Tanner, &c.

9 *Ann. c.* 11.

or

or if any Buyer shall carry it from thence before it shall be marked, they shall respectively forfeit 50*l.* for each Offence; one Moiety to the Crown, the other to the Informer; and the Skins are forfeited to the Crown.

A Warrant to levy the 50*l.* or the mitigated Penalty.

To the Constable, &c.

* Or as the Offence is.

Surrey, to **W** Hereas Complaint hath been made unto us wit, R. B. and W. A. two of his Majesty's Justices of the Peace for the said County, and both of us residing near the Place where the Offence herein after-mentioned was committed, That T. P. of, &c. did, on the 30th Day of this Instant July * carry away from the Yard of R. P. in, &c. two Calf-Skins before the same were marked by the proper Officer for that Purpose appointed, and contrary to the Statute in that Case made and provided: We did therefore command the said T. P. to appear before us on the Day of the Date hereof, at the House of S. A. in L. &c. commonly known by the Name of the Red Lion, where he did appear accordingly. And we upon Examination of Witnesses, and due Proof thereof made on Oath, did then and there adjudge the said T. P. to be guilty of and in the Premises, by Reason whereof he hath forfeited 50*l.* We do therefore require you forthwith to levy the Sum of 25*l.* upon the Goods and Chattels of the said T. P. to which said Sum we have mitigated the aforesaid Forfeiture of 50*l.* and if the Goods so taken shall not be redeemed within six Days afterwards, that then you sell the same, and pay one Moiety of the 25*l.* to the King, and the other Moiety to R. B. who first informed us of the said Offence, deducting 5*l.* for his Charges in the Prosecution thereof. Given, &c.

And no Information shall be brought in the Courts at Westminster in Cases where these Offences are cognizable by the Justices; and no Certiorari shall be allowed to remove their Proceedings, but their Determination shall be final.

Leet.

Signifies an Assembly, and was also called *Freborgh*, or *Frankpledge*, that is, Surety for Freemen; it is a Court of Record, and derived out of the Sheriff's Tourn, for the Ease of the People, that Justice might be administer'd near their own Doors. It was therefore granted by the King to particular Lords, who at first were to view the Tenants and Reliants at certain Times in their Manors; and from hence 'tis called *Curia visus franci plegii* (a Court of View of Frankpledge), which Name it retains to this Day.

Before the
Conquest.

Now this Court being instituted for the Ease of the Tenants within a particular District, and that they might be at no Charge, or Loss of Time to travel to the Sheriff's Tourn; therefore it seemeth reasonable, that something should be paid by them toward the Charge of obtaining the Leet; and from hence came the Duty to the Lord *de certo leto* (of a certain Leet.)

Before the Institution of a Leet, every Freeman when he was twelve Years old, was bound to take the Oath of Allegiance in the Tourn; and after the Leet was established, then he was bound to take it within that particular Precinct; and if he could not *then find Pledges* for his Truth to the King and the People, he was to be committed till he could.

These *Pledges*, or *free Pledges*, consisted of ten Families, the Masters whereof were bound for one another and their Families, that each Person therein should stand to the Law; and if he was not to be found, that then they should answer for any Injury he had done.

And these were the *Pledges* the Lord or his Steward were to view in the Leet, which comprehended those ten Families, and no more; but afterwards the Authority of the Leet was enlarged by many Statutes.

Steward thereof cannot grant Surety of the Peace, unless by Prescription; but he may commit those who make an Affray before him in the Execution of his Office, or bind them to the Peace or Good Behaviour.

He may take a Presentment of an Offence against the Peace.

In every Leet there ought to be a Pillory and Tumbrel, or the Lord of the Leet shall be fined to the King.

Steward ought to give the Statute of 1 *Eliz. c. 17.* concerning Fish in Charge, or forfeits 40 s. between the King and Prosecutor.

He cannot amerce for any Thing but *publick Nuisances*, nor for particular Trespas either against the Lord, or any other Person; for if he doth, an Action lies against him.

Leets

King and
Dickenson, 1
Saund. 135.
Raym. 162

Leet. Liberties, &c.

Leets may be held by Charter or Prescription; by Charter, on the same Days contained in the Charter; by Prescription on certain or uncertain Days, according to Usage; for it is said, that the Statute of *Magna Charta* (which provides, that no Leet shall be holden but twice in the Year), was in Affirmance of the Common Law; and therefore that one may prescribe against it, or that that Statute and 31 *Ed. 1. c. 15.* extend only to the Sheriff's Tourn, and to those Leets only that were granted out of the Tourn; not to those that were before the Statutes; but they must be kept in a certain and determinate Place within the Precinct. *Wood's Inst.* 485.

The Steward is the Judge, as the Sheriff is in the Tourn, *ibid.* And when he intends to hold a Court, he ought to send his Precept to the Bailiff or Reeve of the Manor, six or eight Days before the same is to be held.

Letter. See Behaviour, Libel and Post-Letters.

Liberties and Franchises.

ARE such which have Return of Writs, and not such which are Counties of themselves; as *York, Bristol, &c.* not Towns which have Justices of Peace by Grant of the King; so that no other Justice intermeddles there.

Justice of Peace may execute his Authority within any Liberties, not being a County, and it is good; but yet the Lord of that Liberty may have a Remedy against him.

The Law of *England* in all Cases favours Liberty, which is counted very precious, not only in Respect of the Profit which every one obtains by his Liberty, but also in Respect of the Publick. 2 *Lill. Abr.* 196.

No Freeman shall be imprisoned or condemned, &c. without Trial by his Peers, or the Law. *Magna Charta, c. 19.* and no Person is to be arrested, &c. without Process at Law.

Not where there are exclusive Words in a Charter of a Corporation; there if the Justices of the County at large intermeddle, their Acts are void. Talbot and Hubling, P. 14 Geo. 2.

Libellers and Libels.

L *ibellus* (a Libel) signifies literally a little Book, but by Use it is the original Declaration of any Action in the Civil Law.

It signifieth also a scandalous Report of any Man spread abroad, or otherwise unlawfully published, and then is called *Famofus Libellus* (an infamous Libel), which is the Libel here treated of.

The proper Punishment of a Libel is Fine and such Corporal Punishment, as in Discretion shall seem proper to the Circumstances of the Case.

My Lord *Coke* (who often quotes Scripture in Law-Cases) tells us, That *Job* himself was impatient at a Libel; but he who reads the Text will find, that it was not a Libel which provoked him, but because he was so miserable as to be derided by mean and despicable Persons, who was formerly the greatest Man in the *East*. Job xxx. 8.

So that laughing at the Calamities of another, is so far from being a Libel, that laughing at a Libel itself is no Fault; for if I hear it read, and laugh at it, it is no Publication. Lamb's Case, Moor 813.

Every Libel is either in Writing, or without it.

If in Writing, then copying it, and Delivering that Copy to another, is a Publication; so is Repeating it to others after he hath heard it read; or reading it to them, knowing it to be a Libel. Want's Case, Moor 627.

If without Writing, then it may be by Pictures; as to paint a Man in Fool's Colours; by Signs, as to fix a Gallows, or any other shameful Sign at the Door of the Party. De Libellis famosis, 5 Rep. 125.

A Man affirmed, That my Lord Chancellor *Bacon* had done Injustice, and spoke other scandalous Words of him; for which he had Sentence to perpetual Imprisonment, to pay 1000 *l.* to ride on a Horse with his Face to the Tail, from the *Fleet* to *Westminster*, with his Fault written on his Head; to acknowledge his Offence in all the Courts at *Westminster*, to stand in the Pillory, and that one of his Ears should be cut off there, and the other in *Cheapside*. Poph. 135.

To libel any private Person is an Offence punishable as aforesaid; but to libel a Magistrate is a great Aggravation of the Crime. I shall give some Instances in both. 5 Rep. 125.

And first to private Persons: A Man writes libellous Letters, which he dispersed in the Fields, without sending any to the Person himself; this is punishable as a Libel tho' the Matter is true, for it is not to be justified in an Information; but in a Action on the Case, for printing and publishing a false and malicious Libel, the Defendant may justify that it Private Persons. Lord Darcy and Markham, Hob. 120. Wan's Case, Moor 627.

was true, and many such Actions have been brought. *Har-*
dres 470.

1 Vent. 31.
2 Keb. 502.

Information against the Defendant for causing a scandalous Libel to be framed, printed and published; upon Not guilty pleaded, the Evidence was, that upon Search of the Defendant's Lodging by a Warrant from a Secretary of State, two of the Libels were there found: Adjudged, that tho' the Defendant could give no Account how he came by them, yet this was no Crime within the Information, unless he had maliciously published them.

King and
Payne, 5 Mod.
163.

Where one did pronounce, dictate and repeat the Words, and the other did write them, the Question was, Whether the Writer should be guilty of composing and making the Libel? It was insisted that he should not; for if he should, then every Man who writes a Libel must make and compose it; but adjudged, that he who dictates, and he who writes the Libel are both guilty, because the Writing shews an Approbation of the Libel dictated, and they are both Makers of it; for all who concur and shew their Approbation to an unlawful Act, are Guilty.

King and Bear,
2 Salk. 417.

Indictment for composing, writing, making and collecting several Libels; in one of them amongst other Things it is contain'd *juxta tenorem & effectum sequentem* (according to the Tenor and Effect following); the Defendant was found Guilty as to the *Writing and Collecting*, and Not guilty as to the rest: Adjudged that the Copying a Libel without Authority, is Writing a Libel; and he who thus writes, is a Contriver of the Libel; and when the written Copy of a known Libel is found upon him, it is an Evidence of the Publication of it; but if such Libel be not *publickly known*, then the bare having a Copy is no Publication: That there is a Difference between *Tenor & effectus* (Tenor and Effect); for if this Indictment had been *juxta effectum sequen'* (according to the Effect following) it had been naught, because the Court is to judge of the very Words, and not of that Construction which is made by the Prosecutor; for the Tenor of a Thing is the Transcript, and imports the Words themselves: That the bare Writing a Libel is criminal; yet it was not punished in the * Star-Chamber.

* Barrow and
Lewellen,
Hob. 62. Her. 4.
1 Lev. 139.

A Man may be
indicted before
Justices of the
Peace for writ-
ting a scanda-
lous Letter.

A Man was Suitor to a rich Widow, and the Defendant wrote a Letter to her, advising her not to marry him, for he was a debauched Person, and had the Pox, and was not worth a Groat; and that he declared, if he married her, then he would allow 50 *l. per Annum* to a Whore: This Letter was conveyed to the Widow, but not subscribed by the Defendant; but upon Evidence it appeared to be his Writing; he was fined 200 *l.* at Sessions.

Against Magi-
strates, 1 Leon.
237.

To libel the Government is a greater Offence than to libel Magistrates.

A Man

A Man was indicted for saying, That *Campion* was not executed for Treason, but for Religion, and that he was as honest a Man as *Cranmer*; but the Jury did not find, whether the Words were spoken *malitiose & seditiose* (malitiously and seditiously); and so the defendant was discharged.

One *Jeffs* libelled my Lord *Coke* for the Judgment in the Case of *Magdalen College*, by writing, That it was Treason, and he a Traitor and perjured Judge; this he fixed on the Gate of *Westminster-Hall*, for which he was sentenced to stand in the Pillory, with a Paper, &c. and to be committed till he made his Submission in every Court: He was also to find Sureties for his Good Behaviour for Life, and to pay 1000 *l.* to the King.

Jeffe's Case,
Cro. Car. 175.

But a more grievous Fine was set upon the Defendant, for speaking Words against a Judge sitting in Court; and this was one *Harrison's Case*, who came to the Court of Common Pleas, and said, *I accuse Mr. Justice Hutton of High Treason*: The Man was angry with this Judge for his Argument about Ship-Money, in which he affirmed, amongst other Things, That the King could not charge his Subjects to find Ships, &c. He was fined 5000 *l.* and imprisoned during the King's Pleasure.

Cro. Car. 503.

The Defendant delivered a Paper to the Parson to publish in the Church, in which are these Words: *You are desired to bewail the Wickedness, &c. which of late is broken out in this (formerly) well-governed City of Exeter; that God would turn their Hearts from committing those Wickednesses, which go unpunished by Magistrates.* He was fined 100 *l.* though it is no direct Accusation of the Magistrates; for it doth not set forth that they did know what Wickedness was committed, and let it be unpunished.

King and Pym,
Sid. 219.

Information against the Defendant for writing a Libel against the Government, containing several scandalous Things, *secundum tenorem sequentem* (according to the Tenor following), and among the rest there was a Sentence in which the Word *nor* was mistaken for *not*; and this being found Specially, it was adjudged that *Tenor* implies a true Copy, which this was not, because *nor* differs from *not* both in Grammar and Sense; and no Man can swear that the Libel set forth in the Information is a true Copy of the written Libel: That there are two Ways of describing a written Libel, either by the Words, or Sense: The first is, *Cujus Tenor sequitur*, or *Quæ sequuntur in his Anglicanis verbis* (whose Tenor follows, or which follows in these English Words), in which the Description is by particular Words, and of which every Word is a Mark, so that if there is any Variance, 'tis fatal: The other Description is by the Sense, and that is to set forth in the

Information, that the Defendant made a Writing, and therein wrote so and so, translating it into *Latin*, in which 'tis not material to be very exact in the Words, because the Matter is described by the Sense of them.

Libellers may be punished by Indictment, and fined, or by an Action on the Case where the Words are actionable; if a Libel against a private Person should be found, it ought to be burned, or carried to a Magistrate.

If against any Person in Office, or Magistrate, it ought to be deliver'd to some Magistrate, that the Offender may be found and punished.

The Person to be convicted must be either the Contriver of the Libel, or a Procurer of contriving it, or a malicious Publisher; but reading or hearing it read, is no Publication, unless he repeat Part of it afterwards in the Hearing of another. 9 *Rep.* 59. *b.* *Lamb's Case.*

Want's Case,
Moor 627, 821.
Goodrick's
Case, 2
Brownl. 151.
Hob 62, 215.
Raym. 201.
Poph. 140.

If a scandalous Letter be directed to the Party himself, and not to a third Person, no Action on the Case will lie, because 'tis not a Publication; but this tends to the Breach of the Peace, and therefore shall be punished by Indictment, or by Information.

And yet Sir *Francis Bacon* said, That such a private Letter doth in a Manner compel the Party to whom 'tis sent, to publish it to his Friends for their Advice, and for fear it should be published on the other Side; so that this compulsory Publication shall be taken as a Publication by the Delinquent; the Fine was 500 *l.*

If a Libel is found in an House, the Master of that House cannot be punished in an Information for framing, printing and publishing it; but he may be indicted for having it, and not delivering it to a Magistrate. 1 *Ven.* 31.

It hath been a Question, Whether a Person could be indicted before the Justices of Peace for a scandalous Letter concerning a private Person, because in the Commission of the Peace there are no Words to warrant it; but in the Commission of Oyer and Terminer, there is a Clause for that Purpose; viz. *De propalationibus verborum* (of the Manifestation of Words); yet 'tis now resolved, That such a Letter is indictable at the Sessions, because it tends to the Breach of the Peace. 1 *Lev.* 139. 2 *Keb.* 502. 5 *Co.* 125.

So do the Words spoken of a Justice, as that he is not fit to talk Law. 3 *Mod.* 139. *King and Darby.*

Indictment for a Libel against a Justice of Peace.

Middx. to **T**HE Jurors, &c. That whereas on the 3d^d wit, Day of August in the 9th Year of the Reign, &c. at H. in the said County, the Gaol of our said Lord the King was well and truly, and according to the Laws and Custom of this Kingdom of Great Britain, delivered (at the General Quarter-Sessions of the Peace then and there held before Sir A. S. and Sir J. P. Baronets, and others their Companions, Justices of our said Lord the King assigned to keep the Peace in the said County, and also to hear and determine divers Felonies, Trespasses, and other Misdeeds committed in the said County) of certain Prisoners then being in the said Gaol, and then and there indicted before the said Justices; nevertheless one J. O. late of H. in the said County, Yeoman, not ignorant of the Premises, but contriving and intending to draw the said Justices into great Scandal, Dishonour and Infamy, afterwards, that is to say, on the 5th Day of August in the same ninth Year above-mentioned at H. aforesaid in the said County, did maliciously publish a certain infamous Libel in Writing to defame the said Justices, containing among other Things these false and scandalous Words following, that is to say, when in Fact, &c. against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Library.

THE Provision for the Clergy is so very mean in many Places, that they cannot buy such Books which are necessary for their Studies; therefore several Libraries have been erected by charitable Contributions; and by a late * Act of Parliament, Provision is made to preserve the * 7 Ann. c.14. same.

By which Act every Incumbent, before he shall be permitted to use such Library, must enter into a Bond to be approved by the proper Ordinary, conditioned for the Preservation of the Library, and to observe the Rules and Orders belonging to the same.

And if any Book shall be taken away or detained, the Incumbent, or any other Person, may bring an Action of Trover in the Name of the proper Ordinary, and shall recover treble Damages, with full Costs; which Damages shall be applied to the Use of the Library.

The said Ordinary, or his Commissary, or his Official, or the Archdeacon, or his Official or Surrogate, if the said Archdeacon is not Incumbent of the Place where the Library is, may inquire in their Visitations of the State of such Library, and the Ordinary may appoint any Person to view it.

And where a Library is appropriated to the Use of the Incumbent, he must, within six Months after his Induction, make a new Catalogue of all Books in the Library, and must sign the same, acknowledging the Possession of such Books, which Catalogue he must deliver to the proper Ordinary within the Time aforesaid.

And upon any Vacancy, the Library shall be locked up by the Church-wardens, or by a Person appointed by the proper Ordinary, or by the Archdeacon, unless the Place where such Library is kept shall be used for the Vestry, or otherwise for Dispatch of Business; and after that is done, the Place shall be locked up.

And likewise, a Book shall be kept in the Library for the entering of all Benefactions, which the Incumbent is to see fairly enter'd, and the Ordinary is to make proper Rules and Orders, but not contrary to the Order of the Donor, which shall be entered in the said Book.

None of the Books shall be alienable without the Consent of the Ordinary, and then only when there is a Duplicate of such Book: And if any Book is taken away or lost, a Justice of Peace may grant his Warrant to search for the same; and if 'tis found, the Justice shall immediately order it to be restored to the said Library.

A Warrant to search, &c.

To the Constable, &c.

Suffex, to **W** Hereas Complaint hath been made before me, wit, by W. C. Rector of B. in the said County, That a Book, called Hooker's Ecclesiastical Polity, was lately taken out of the Library erected at B. aforesaid, and appropriated to the Use of the Minister there: These are therefore to require you to search diligently in all Places where you and the said W. C. shall suspect the same to be; and in Case the same shall be found, that then you immediately cause the same to be restored to the said Library, &c.

Licence.

Licence.

Licenses must be dated the Day of the Sessions, and must be sealed by three Justices, under the Penalty of 5 *l.* ^{39 Eliz. c. 4.} ^{1 Jac. c. 25.} and the Sessions must take Bond, that the Person licensed shall not forestall: The License costs 1 *s.* and the Recognizance 4 *d.*

A Woman can have no License, and those Men who have Licenses must sell their Goods themselves, and not by their Servants.

Two Justices may license poor diseased Persons to travel to the *Bath* for Remedies, so as they are provided of Relief in their Travel and do not beg.

Without a License Persons must not buy Corn but in Markets.

Sessions determine these Offences. 3 & 4 *Ed. 6. c. 21.* and 5 & 6 *Ed. 6. c. 14.*

No License shall be granted to keep a Common Inn or Alehouse, &c. but at a general Meeting of the Justices acting in the Division where the Person dwells. 2 *G. 2. c. 28.*

Linen Cloth.

HE who by racking, beating, or casting any deceitful Liquor, or by other Means, on Linen Cloth of any Sort to make it deceitful, or the worse for Use, forfeits the Cloth, may be committed for a Month, and fined according to the Discretion of the Justices. 1 *Eliz. c. 12.*

Lodgers.

Taking away with an Intent to steal or imbezil any Bedding, Furniture or Chattel, which by Agreement they are to use with their Lodging, 'tis Felony. 3 & 4 *W. & M.* continued by 4 & 5 *W. & M. c. 24.*

Loom-Lace. See Bone-Lace.

Low-bells, Lurcher. See Dogs.

Maihem.

THIS is a Corporal Hurt, whereby the Use of any Member is lost, which might be either a Defence to one's Person, or occasions any Deformity; as if a Bone, Finger or Joint is so broken or wounded, that it is made crooked and shrinks, or an Eye put out, or a Tooth broke, &c.

The old Writers have been so nice in this Matter, that they affirm it must be a Fore-tooth broken; for if the Grinders or Cheek teeth are beat out, they say, 'tis not a Maihem, *quia latens & non inducit corporis deformitatem* (because hid, and does not shew the Deformity of the Body). *Staudf.* 39.

But yet they allow Castration, *quavis latet* (although it lies hid), to be a Maihem; and my Lord Coke cites a Record to prove it, viz. *H. Hull indictatus fuit de Maibemio eo quod absceidit virilia Johannis Monachi* (to wit H. H. was indicted for a Maihem, for that he cut off the Privy Members of J. M.) whom he caught in Adultery with his Wife.

Cutting off the Ear, no *Maihem, quia latens* (because hid;) for this Offence an Indictment may lie at the Sessions, only with this Difference, That when a Fine is set, the Justices cannot increase it upon View of the Person maimed, as the Court of B. R. may.

The Judgment upon a Conviction or an Indictment is a Fine, and upon an Action of Trespass, Damages, &c. and therefore a Recovery in Trespass is a good Bar in an Appeal of *Maihem*.

In an Appeal of *Maihem*, the Defendant pleaded in Bar, That the Appellant had recover'd 200 Marks against him in an Action of Assault, &c. and averred it was for the same Offence; and this was held a good Plea.

Indictment for a Maihem.

Sussex, to **T**HE Jurors, &c. *That on the 4th Day of*
wit, August in the ninth Year of the Reign, &c.
 J. O. of H. in the said County, Yeoman, by Force and Arms
 did break and enter the Close of one T. B. situate at H. afore-
 said in the said County, and did make an Assault upon the said
 T. B. then and there being in the Peace of God, and of our
 said Sovereign Lord the King; and did maliciously and unlaw-
 fully beat the said T. B. with a drawn Sword [or as the
 Case is] of the Value of Three Shillings, which the said J. O.
then

then and there held in his Right Hand, and did then and there cut off the Right Thumb of the said T. B. and so did awickedly and * feloniously then and there maihem the said T. B. to the great Damage of him the said T. B. and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

* These Words are requisite, because formerly the Offender was to

lose the same Part, it being Felony at Common Law. 3 Inst. 18.

But now by the Statute of 22 & 23 Car. 2. c. 1. §. 7. commonly called the *Coventry Act*, 'tis made Felony without Clergy in all their Counsellors, Aiders and Abettors, maliciously to cut off and disable the Tongue, put out an Eye, slit or cut the Nose, or cut off or disable any Limb or Member, with an Intention to maim or Disfigure.

Hudson and Lee, Moor 268. That Recovery in Action of Battery was good Bar to Appeal of Maihem,

1 Leon. 318. 4 Rep. 45. See 5 H. 4. c. 5.

If a Man attack another of Malice forethought, in order to murder him with a Bill or any other such like Instrument which can't but endanger the Maiming him, and in such Attack happens not to kill, but to maim him, he may be indicted on this Statute, together with all those who were his Abettors, &c. And it shall be left to the Jury on the Evidence, Whether there was a Design to Murder by Maiming, and consequently a malicious Attempt to Maim, as well as to Kill; in such Case the Offence is within the Statute, though the primary Intention was Murder. 1 Hawk. P. C. 112. So ruled at *Coke and Woodburn's Trial*, who were executed 8 Geo. 1. for slitting *Crisp's* Nose; though *Coke* pleaded that he had no Intention to Maim, but to Kill, &c.

Any Person unlawfully attempting to kill, or shall unlawfully strike, assault or wound a Privy Counsellor in the Execution of his Office, he shall suffer as a Felon without Benefit of Clergy. See 9 *Annæ*, c. 16.

Maintenance.

IS an Upholding any Quarrels by Word or Writing, (having nothing to do therein) to the Disturbance of Common Right; 'tis a Crime which the *Normans* first brought into *England*, for it was never put in Practice before that Time.

Amerideth's Case, Moor 562, Jepps and Turnbridge, &c. 815, 816.

Culpa est rei immiscere sibi non pertinenti.

(It is a Fault for any one to intermeddle with that which does not belong to him).

'Tis

'Tis thus divided, viz. $\left\{ \begin{array}{l} \text{Ruralis.} \\ \text{Curialis.} \end{array} \right.$

Manutenentia Ruralis is the unlawful taking or keeping Possession of another Man's *Estate*; this is punishable at the Suit of the King.

Manutenentia Curialis is to maintain one Side in any Suit in a Court of Justice, but it must be *Pendente Placito* (pending the Writ); for if Money is given before the Suit begun, 'tis not Maintenance. 3 H. 6. fol. 53.

Maintenance,
Champerty,
Embracery.

When the Maintainer is to have Part of the Land or Debt when recover'd, 'tis *Champerty*; but where he is to have no Part of it, 'tis *Maintenance*; when he laboureth for Witnesses either to appear, or by instructing them, or threatening, &c. then he is an Embracer, and may be punished at the Suit of the King or Party.

To inform a Jury voluntarily, not as a Witness, but of his own Head, is Maintenance. 28 H. 6. fol. 6.

One Juror giving Money to another to pass a Verdict, is Maintenance. 17 Ed. 4. fol. 5.

If a Man of Power or Authority shall declare in the Presence of many People, that he will spend Money for such a Person in a Suit, &c. 'tis Maintenance. 9 H. 7. fol. 18.

Moor 816.
2 Leon. 134.

To write a Letter to a Jurymen to appear; if 'tis done by one who is no Party to the Suit, 'tis *Maintenance*; but if by one of the Parties, 'tis *Embracery*: Yet my Lord *Hobart* tells us, That where the Defendant was indicted for desiring a Juror to appear, and to do him reasonable Favour, or *Words to the like Effect*; this is not punishable, because the Court must know the very Words.

Fozzey and
Cook, Hob.
294.

To assist a Person prosecuting an *Indictment*, is not *Maintenance*, because it is for the Advantage of the King; but it is otherwise if the Prosecution had been by an Information upon a Penal Law.

Lord Howard
against Bell,
&c. Hob. 91,
97.

* But where
'tis a Freehold,
or where one
joins who hath
no Interest, it
is otherwise.

So when Men have a *joint Interest*, as for *Right of Common*; there they may join and enter into Bonds to defend that Right against the Lord or any other Person, and this is not *Maintenance*; * because 'tis in Effect but the Interest or Suit of one; and as they have this Prejudice by it, that one cannot be a Witness for the other, therefore 'tis reasonable they should all join for their common Advantage.

Lord Grey's Case, Moor 562, 783. 32 H. 8. c. 9.

This Crime is punishable, either by an Indictment at Common Law, or by an Information upon the Statute of
32 H.

32 H. 8 which is, That none shall unlawfully maintain any Suit, or retain any Person for Maintenance, embrace Jurors, or suborn Witnesses, on Pain to forfeit for every Offence ten Pounds, to be divided between the King and the Prosecutor.

The preceding Paragraph of that Statute is, (*viz.*) That Dyer 53. shall buy any pretended Title to Land, unless the Seller hath taken the Profits thereof one whole Year next before such Bargain; if he doth, then both Buyer and Seller are each to forfeit the Value of the Land.

A Woman was disseised, and being out of Possession, and not making any Entry, she made a Lease of the Lands to her Brother to try the Title against the Disseisor; and this was held Maintenance, though no Interest passed to the Lessee; so likewise where one supposed he had a Title, and contracted with another to sell it, and made a Lease to a Friend to try the Title, tho' no Action was brought, or any Thing done on it. Sl. wright and Page, Moor 226. Leigh and Healy, 751. 1 And. 201. 1 Leon. 162.

Soliciting the Jury, and shewing them Precedents where great Damages were given in a like Case, it is Maintenance.

An Indictment for Maintenance.

Kent, to **T**HE Jurors, &c. That J. O. of H. in the said County, Gent. on the 4th Day of August in the 9th Year of the Reign, &c. at H. aforesaid in the said County, did unjustly and unlawfully * maintain and uphold † a certain Suit, which was depending in the Court of our said Sovereign Lord the King, before the King himself, between one T. P. Plaintiff, and F. C. Defendant, in a Plea of Debt, on the Behalf of the said T. P. against the said F. C. contrary to the Form of the Statute in such Case made and provided; and to the manifest Hinderance and Disturbance of Justice, and in Contempt of our said Sovereign Lord the King, and to the great Damage of the said F. C. and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

* This being the Word in the Statute, it had been naught, if omitted. Savil 41. 1 Vent. 302. † It must set forth a Suit. Savil 42.

Prosecution on the Statute must be within a Year after the Offence committed. Moor 751.

Mayor.

Mayor.

THIS is the Chief Magistrate of the Corporation; he is mentioned in several Statutes, and generally hath the same Authority in the Corporation as a Justice of Peace hath in the County at large.

I shall mention his Authority by some Statutes.

Alehouse-keepers unlicensed: He may commit and levy the Penalties. 3 *Car.* 1. c. 3.

Armed Men riding: May punish. 2 *Ed.* 3. c. 3.

Custom Officers: He may commit those who abuse them. 14 *Car.* 2. c. 11.

Customs: May grant Warrants to search for Goods not paying Customs. 12 *Car.* 2. c. 19.

Gamesters unlawful: May commit them. 33 *H.* 8. 9.

Leather: May determine Matters concerning it.

Orchard Robbers: May punish. 43 *Eliz.* 7.

Sabbath-breaking: May put in Execution the Acts concerning it. 3 *Car.* 2.

Swearers and Curfers: May punish. 21 *Jac.* 20.

Soldiers departing without License: May arrest. 10 *H.* 6. c. 15.

Weights, false: May punish those who use them. 11 *H.* 7. c. 4.

Malt.

What Time is allowed for making Malt.

UPON the Statute of 2 & 3 *Ed.* 6. c. 10. it is to be considered:

In *June, July* and *August*, it must be seventeen Days in the *Fat* and *Floor* steeping and drying, and in other Months three Weeks.

Sale thereof.

Out of every Quarter Half a Peck of Dust shall be taken either by Treading or Rubbing, &c. before 'tis put to Sale, or forfeits 20 *d.* per Quarter if sold, to be divided between the King and Prosecutor.

If bad and good is mingled, and put to Sale, forfeits 2 *s.* per Quarter, to be divided (*ut prins*).

Sect. 4.

Constables may search where bad Malt is made or mingled with good, and by the Advice of a Justice may sell it at Discretion.

In

In Sessions, by Presentment of the Jury, or by the Information of two Witnesses.

Prosecution must be within a Year, &c. but those who make it for their own Use cannot be punished by this Law.

Upon Appeals to the Sessions from any Judgment given by particular Justices, upon Information for Offences relating to the Duties on Malt, Hides and Skins, &c. the Sessions may re-examine the Truth and Merits of the Fact, upon the Oaths of the Witnesses, and finally determine the same, and rectify and amend any Defects of Form in the Orders of particular Justices.

Offences where
to be deter-
mined.
Sect. 5.

6 Geo. 1. c. 24

After 25 March 1723, and after the Duties by 12 Anne, c. 2. imposed on Malt, and hereby continued, are paid, if any Quantity thereof should happen to be destroy'd or damaged by Fire, or shall perish or be damaged by the Casting away of, or by any inevitable Accident happening to any Barge or Vessel, in which the Malt shall be transporting from one Part of this Kingdom to another, or put on Board for that Purpose, and this being proved by the Oath of one or more credible Witnesses, and of the Duty being paid before the Justices in the Quarter-Sessions, then the Sessions may grant a Certificate thereof, and of the Amount of the Duty; and upon producing such Certificate to the Collector of the Duties on Malt he shall repay the Proprietor so much Money as the Sum certified to be paid for the Duty of the Malt so lost shall amount unto; and if not totally lost, but damaged only, the Sessions shall settle the *Quantum* on Proof of the Damage and Payment of the Duty, and certify under their Hands and Seals how much they allow for Damages to be repaid by the Collector. See the *Statute*.

9 Geo. c. 3.

Also by 12 G. 1. c. 4. Malt enter'd and made for Exportation only, shall not be charged with any of the Duties imposed on Malt made in *Great Britain*; and Makers of Malt for Exportation are, before they begin to steep it, to leave Notice with the Officer, &c. of the Quantities, &c. which shall be kept separate from that for Home Consumption, on Pain of 5 s. for every Bushel. And not to begin to wet any Grain, &c. for Exportation, above six Days before all other Grain, &c. shall be dried off, on like Forfeiture: And when the said Malt is made, it shall in the Officer's Presence be measured, and carried directly on Shipboard, or into Store-houses, and there kept separate from other Malt, under two Locks and Keys; one Key to be kept by the Officer, &c.

Malt-Makers not making Entries of Corn, &c. wetted for Exportation, or not providing Store-houses, or within six Days after drying, not causing the same to be measured, &c. *ut supra*, forfeit 50 l. and the like for opposing the Officer; and if not exported within nine Months after made, to forfeit

Malt. Markets and Fairs.

5 s. per Bushel, and no Draw-back to be allowed for any Malt exported.

By 3 Geo. 2. c. 7. §. 13. Two Clauses in the 6 Geo. 1. c. 21. to prevent steeping of Barley in any other Place than in Cisterns duly enter'd, and to prevent Corn making into Malt to be so worked, that it shall acrespire, are repealed.

Malt-Makers for every twenty Quarters of Barley, &c. enter'd and made into Malt for Exportation, shall have an Allowance of thirty Quarters only, though the same should run to a further Length.

On Certificate of Malt being exported, and Security given, the Allowance is to be paid: Penalty on relanding over and beside the Penalty of the Bond is all the Malt, and treble the Value.

Malt steeping for Exportation is to be kept separate till measured, and the Malster is to give Notice to the Officer, when he intends to take the Malt off the Kiln, which is then to be lock'd up, and the Penalty on opening the Lock without the Officer is 50 l.

Malsters on the 24 June 1730. were to clear out of their Warehouses all Malt within 9 Months; and so all future Malsters, on Forfeiture of 50 l. one Moiety of the Forfeitures to his Majesty, and the other to the Informer.

Vide 11 Geo. 2. c. 1. &c. and the other annual Statutes.

Manufactures. See Apprentice.

Manlaughter. See Homicide.

Marriage. See in Felony, and Woman.

Mariners. See Seamen.

Markets and Fairs.

THESE are either by Grant or Prescription, and if held otherwise, they are unlawful. 2 Saund. 174. Tard and Ford.

Now because it may be necessary to know how far the Property of a Thing is devested by Sale in a Market Overt; therefore it is to be consider'd,

That in London every Day, except Sunday, is a Market Overt, and the Sale in Shops there for a valuable Consideration is good.

5 Co. 83. b.

But then it must be of such Goods which are proper to the Trade of him in whose Shop it is sold, as Plate to a Goldsmith, &c.

* Fermor's
Case, 3 Rep.
78. b.

And it must be sold openly in the Shop, and not in a secret Manner; and the Buyer must * not know that the Goods are

are stolen. In the Country, where Things are sold in distinct Places in a Market or Fair, the Goods must be sold in the usual Place appointed for the Sale thereof, otherwise the Property is not altered.

If I deliver Goods to another to keep for me, or if I pawn them, and he sells them in a Market, the Property is still in me. *2.*

Sale upon a *Sunday*, though in a Market or Fair, shall not alter the Property.

It hath been a Question whether a Clerk of a Market can distrain, *ex Officio* (by Virtue of his Office) for using unlawful Weights or Measures, not according to the Statute.

Measure. See Weights.

Militia. See Soldiers.

Miller. See Weights.

Minister. See Divine Service.

Misdemeanor.

ONE sent a *Challenge* by another to *fight*; they were both indicted for a *Misdemeanor*, and fined 100 *l.* apiece, and committed for a Month without Bail, and were to make a publick Recantation as the Court should direct, and to be of the Good Behaviour for seven Years.

King against Darcy and Collins, 1 Sid. 186.

It would be endless to enumerate the several Offences which might be proper under this Title; I shall therefore mention a few, and no more.

A Man and his Wife disagreeing, she applied herself to one *Golding* a Parson, and offered him Forty Shillings to whip her Husband. The Parson undertook it, and came to the House in Woman's Clothes, and to the Chamber where her Husband was, and endeavoured to whip him with a Rod; in striving they were both hurt; the Parson run away from the Husband, who died a little after the Scuffle: All this being proved, the Wife and the Parson were each of them fined 500 *l.*

Poph. 129.

Sir C. S. was indicted at Common Law for a *Misdemeanor*, *viz.* for shewing himself naked in a Balcony in *Covent-Garden*: He confess'd the Indictment, was fined 2000 Marks, and to be committed without Bail, and to be of the Good Behaviour for three Years.

King against Sir Ch. Sidney, Sid. 163.

Another was indicted for seducing an Apprentice to a Bawdy-house, and causing him to spend his Master's Money.

Another

King and Bacon, 1 Sid. 231. Another for intending to kill the Master of the Rolls, and offering a Person 100 l. to do it; he was fined 1000 Marks, to be imprisoned three Months without Bail, and to be of Good Behaviour during Life.

King and Skyrret, 1 Sid. 312. Another for reading a Release to an illiterate Man in other Words than it was written, which he sealed.

Misprision.

Of Treason.

IS where one knoweth that another hath committed Treason or Felony, but was not consenting to it, and yet conceals the Offender.

If he knoweth of the Treason *before* it is committed, and assents to it, then he is a principal Traitor.

So if he receive and comfort a Traitor knowing him to be so.

Concealing Treason was Treason by the Common Law, but now by the Statute of 1 & 2 Mar. c. 10. it is declared to be Misprision.

Forging foreign Money is Misprision of Treason, *per* 14 El. cap. 3.

3 Inst. 134.

The Judgment in Misprision of Treason is Forfeiture of Goods for ever, Forfeiture of Profits of Lands during Life, and Imprisonment during Life.

To draw a Sword, or strike a Judge or Juryman in the Presence of a Judge sitting in Court; to strike one in *Westminster-Hall*, sitting the Courts, like Judgment as in Misprision of Treason, and shall likewise lose his Right-hand.

Of Felony.

By the Common Law, concealing a Felony, or procuring the Concealment, or compounding it, was Misprision.

But if a Man knows that a Felony is committed, and taketh his Goods again, it is no Offence unless he taketh them, or other Amends, not to prosecute; and then it is called *Theftbote*, which is an Offence more than a Misprision of Felony, because it is more than a Concealment of the Felon.

But the Punishment is the same in both Cases, *viz.* Fine and Imprisonment, if in a common Person; if in an *Officer*, Fine; and though paid, Commitment for a Year.

Other Misprisions.

In a Grand Juror.

{ By discovering the Persons indicted, or Evidence; punishable by Fine and Imprisonment.

Judge.

{ By any Person assaulting him, the like Punishment.

- Juror. { By assaulting him, for giving a Verdict against the Offender; the like Punishment.
- Prisoner. { Rescuing him from the Bar of *B. R.* loses his Right-hand, Goods, &c. Profits of Lands during Life, and perpetual Imprisonment.
- Striking. { Sitting the Courts at *Westminster* in Presence of the Court, or drawing a Weapon, the like Punishment.
- Drawing Weapon. { In Presence of those Courts, or before the Judge of Assize, upon any Judge or Justice, though no Stroke given, the like Punishment.
- Striking in the Presence of the King. { If Blood is drawn, Loss of Right Hand, and perpetual Imprisonment. *per 33 H. 8. cap. 22.*

Though Justices of Peace are not impower'd by their Commission, or by any Statutes to hear and determine these Offences; yet since it is against the Peace, they may cause the Offenders to be taken, and two Justices may take Information upon Oath against such Persons, and put it into Writing, and bind the Witnesses in a Recognizance to prosecute and give Evidence at the Assizes, &c.

Mittimus.

MUST be to the Common Gaol, by 23 *H. 8. c. 2.*
It must be under Seal.

It must contain the Cause of Commitment.

It must have an apt Conclusion, (*viz.*) There to remain until deliver'd by due Course of Law, (or as some particular Act directs); or else the Warrant is void.

The Cause of Commitment is necessary to be expressed, that it may appear whether the Person is bailable or not; for if no Cause is expressed in the Commitment, then other Justices may bail him, though it is not advisable so to do, without the Privy of the Justice who committed him.

Money.

IF any refuse lawful Money in Payment, he may be compelled by the Officer of the Place to receive it, and be committed or punished as he thinks fit; and if an Officer refuse it, a Justice may punish him at Discretion. 19 H. 7. c. 5.

Mortmain.

M*anus Mortua*, to wit, a Dead Hand, is from the French *Mort* and *Main*, and signifies an Alienation of Lands or Tenements to any Corporation, Guild, or Fraternity, and their Successors, as Bishops, Parsons, Vicars, &c. which may not be done without License of the King and the Lord of the Manor, or of the King alone, if it be immediately holden of him; the Reason of the Name proceeds from this, that the Services and other Profits due for such Lands should not without such License come into a dead Hand, or into such a Hand as it were dead, and so dedicated unto God or pious Uses, as to be abstractedly different from other Lands, Tenements or Hereditaments, and is never to revert to the Donor, or any temporal or common Use. *Mag. Charta*, c. 36. and see the Statute of *Mortmain*, 7 Ed. 1. & 18 Ed. 3. Stat. 3. c. 3. & 15 R. 2. c. 5. which Statutes are abridged by 39 Eliz. c. 5. whereby the Gift of Land, &c. to Hospitals is permitted without License. *Blount's Lexo Dict. verbum* Mortmain.

The President and Governors for the Poor within the Cities of *London* and *Westminster*, may without License in *Mortmain* purchase Land, &c. not exceeding the yearly Value of 3000 l. 14 C. 2. c. 9.

What introduced this Title, though not directly Business for the Justice of Peace, yet highly necessary for him to be acquainted with, was the late Act of the 9 Geo. 2. c. 36. to restrain the Dispositions of Lands, whereby the same become unalienable, which enacts, that after the 24th of June 1736. no Manors, Lands, Tenements, Rents, Advowsons, or other Hereditaments, Corporeal or Incorporeal whatsoever; nor any Sum or Sums of Money, Goods, &c. shall be given for charitable Uses, unless by Deed indented and executed before two Witnesses twelve Months before the Death of the Donor, and be inrolled in his Majesty's Court of Chancery, within six Months after the Execution,

tion, and to take Effect in Possession, &c. this Limitation is not to extend to Purchases or Transfers made for valuable Consideration.

All Gifts, &c. made after the said 24 June 1736. otherwise than as directed by this Act to be absolutely void, yet not to prejudice the two Universities, or the Colleges of *Eaton, Winchester* or *Westminster*.

Nevertheless no College shall hold more Advowsons than shall be equal to one Moiety of their Fellows, &c. not to extend to *Scotland*.

Mortuaries.

ARE not to be taken, but where accustom'd to be paid, nor where the Goods of the Deceased are under ten Marks.

A Spiritual Person taking more than 3 s. 4 d. where the Goods are under 30 l. and above 6 s. 8 d. where the Goods amount above the Value of 30 l. and under 40 l. or above 10 s. where they are above 40 l. forfeits all taken above his Due, and 40 s. besides to the grieved, to be recovered by Action of Debt, &c. 21 H. 8. c. 6.

The Statute of 21 H. 8. so far as it relates to the taking any Mortuary on the Death of a Clergyman, in the Dioceses of *Bangor, Landaff, St. David's*, and *St. Asaph*, is repealed 12 Ann. c. 6. and made void. See the Statute.

Multiplication of Gold and Silver.

THIS is a changing any other Metal into Gold or Silver, by a Quintessence, as my Lord Coke calls it, or by any Elixir or Philosopher's Stone; it is made Felony by 5 H. 4. c. 4. 3 Inst. 74. Dyer 88. a.

Murder.

IS defined by *Bracton*, who wrote about the latter End of the Reign of *H. 3.* thus: That it was *Occulta hominum Extraneorum & notorum occiso manu hominum nequiter perpetrata* (the secret slaying of Foreigners and noted Men, wickedly committed by the Hand of Men).

The Word *Occulta* was very necessary in this Definition, for it distinguished Murder from Manlaughter; for if it was done secretly, it was always Murder; but if openly, then it was only Manlaughter.

And as the Law then stood, if a Man was found slain, he was taken to be *Extraneus*, that is, a *Frenchman*, if it was not proved he was an *Englishman*; which Proof was incumbent upon the Country, by Inquisitions taken before the Coroner, which he was bound to return to the Justice in *Eyre*; and sometimes such Inquisitions were taken before those Justices themselves.

And since that Time the Killing a Foreigner was always reputed Murder, though it happen'd *per infortunium* (by Misfortune): Therefore if the Criminal was taken, he was to be tried by *Ordeal*; if he was not taken, then the County was to be amerced: but if a Foreigner had killed an *Englishman*, he was in no manner of Danger.

† Cap. 26.

So that the Law being then so very severe against the *English*, in Favour of the *Normans*, it is probable the Statute of † *Marlbridge* was made, and about the same Time in which *Bracton* wrote; by which it is enacted, That *Murdrum de cætero non adjudicetur coram Justiciariis ubi infortunium tantummodo adjudicatum est; sed locum habeat murdrum in interfecis per felonium, & non aliter* (Murder from henceforth shall not be judged before our Justices, where it is found Misfortune only; but it shall take Place in such as are slain by Felony, and not otherwise).

After the Making this Statute, if a *Frenchman* had been killed by *Misfortune*, the County was not to be amerced, tho' the Criminal was not taken, neither was he to be tried by *Ordeal*, if taken.

But since *Bracton* wrote, we have another Definition of Murder, *viz.* That it is the Killing any Person within any County in *England* upon *Malice forethought*, the Death ensuing within a Year and a Day. *H. P. C. fol. 43.*

This Crime is aggravated by the Quality and Condition of the Person who commits it; as where a *Maid-Servant* and a *Stranger* conspiring to rob the *Mistress*, and in the Night-time the Servant let the other into the House, and lighted him to her *Mistress's* Bed, where he killed her, the Servant neither

Moor 91.
Dyer 28.

ther doing or saying any Thing, but only held the Candle ; this is *Murder* in the *Stranger*, and *Petit Treason* in the *Servant*.

So where the *Wife* and her *Servant* conspire to kill the *Husband*, and appoint both Time and Place, and the *Servant* alone, in the *Absence of the Wife*, killed him, this is *Petit Treason* in both ; but if he had been killed by a *Stranger*, the *Wife* should be hanged, and not burnt, because she cannot be guilty of *Petit Treason*, where the *Principal* is only guilty of *Murder*.

This Offence is punished with the *Death* of the Offender.

'Tis true, in the Time of our *Saxon Ancestors*, the Punishment for * *Killing* was not by *Blood*, but by *Fines* ; for in those Days every Man's Head was valued according to his *Quality*, by a certain Coin called *Thrymses* ; which being of the Value of three Shillings in Money, Mr. *Selden* has thus computed :

* That is for *Manslaughter*, and not *Murder*.

	<i>l.</i>	<i>s.</i>	<i>d.</i>	
A Countryman killed at	0040	1	3	Jani Anglo- ram, &c. fol. 113.
A Man in Orders,	0300	0	0	
A General, or Captain,	0600	0	0	
A Bishop, or Alderman,	1200	0	0	
An Archbishop, or Nobleman,	2250	0	0	
The King,	4500	0	0	

Killing a Woman with Child, the Offender must pay not only according to the Value of her Head, but likewise for the Child in her Womb Half as much as for a living Child, according to the *Quality* of his Father.

If above Thirty were in Number, and one of them killed another, he that actually committed the Offence was to pay the Value of his Head slain, and likewise a Fine to his Kindred, and every one in the Company 30 s. which Penalty was to be increased according to the *Quality* of the Person killed.

If a *Welshman* grew so rich as to have Land, and maintain a Family, and pay Tribute to the King, he was valued at six Pounds ; and if he had no Lands, he was valued at three Pounds ten Shillings.

These were the Laws of King *Alfred*, and of his Grandson *Athelstan* : But these Punishments by Fines were only inflicted where the Person was killed upon a sudden Quarrel, which we call *Manslaughter* ; but for a long Time afterwards, and until the Statute of † *Marlbridge*, the killing a Man by Misfortune was adjudged *Murder*, with this Difference, That he might purge himself of such Offence, by paying the Sum according to the Valuation of the Party slain.

† 53 H. 3.

The Reason of this Pecuniary Compensation was rightly observed by Mr. *Selden* ; it was, because our Ancestors were

very tender of Life, that two Men might not die upon the Account of the same *Misfortune*: But premeditated and clandestine Murders were never excused by these Payments; those were always punished by Death, and so was Manslaughter likewise, where the Party was not able to pay the Valuation of him who was killed.

Indictment.

Before I shall examine the said Definition of Murder, I shall mention a few Things concerning the Indictment for this Offence, and the finding of the Jury.

3 Bulst. 206.
1 Rol. Rep.
407, 408.

If several are indicted for *Murder*, the Jury cannot find *Billa vera* as to one, and *Manslaughter* in the other; for if they find it so, a new Bill shall be preferred against those who are found guilty of Manslaughter.

2 Rol. Rep. 52.

If a Man is indicted for Murder, they cannot find *Billa vera se defendendo* (a true Bill in his own Defence), for this is contradictory, and the Defendant must be indicted *de novo* (a new).

Place.

1 Bulst. 293.

The *Place where the Stroke was given* must be set forth in the Indictment; and therefore it is not sufficient to say, That he assaulted the Person, and that he gave him a mortal Wound, without shewing in what Place.

1 Bulst. 1.

Two of my Lord *Dorset's* Servants quarrelling at the Fire, went out and fought in the Park, *juxta Knowl* (near *Knowl*), and one was killed; for which the other was indicted, but it did not set forth in what Place or County the Park was, neither was the Word *† percussit* in the Indictment, but *dedit vulnus* (he gave a Wound): And for these Reasons it was quashed.

† Ex malitia
sua præcogita-
ta mûdravit,
is good with-
out the Word
Percussit.

Dyer 25.

5 Rep. 112. b.

2 Cro. 95. 1 Bulst. 109.

So when it was *percussit cum gladio* (he struck with a Sword), but did not say *Felonice* (feloniously). *Cro. Eliz.* 193.
Deering's Case.

The Stroke was laid to be *super sinistram partem Lateris* (upon the left Part of the Side), and did not shew in what Part; and this was held certain enough, because 'tis well understood what is meant by the Word *Latus*; but where it was *cum pignore in sinistra parte collis percussit* (he struck with a Poniard in the left Part on the Rising on the Back); this was held ill, for it should have been *Colli* (of the Neck).

So where the Stroke was alledged to be given at *D.* where of the Plaintiff died at *S.* *Et sic apud D.* he killed him; this is impossible. *Noy* 45.

Day.

Then as to the Day, the Indictment was, That the Defendant assaulted the Person on the 12th Day of February at Oxford, *ad tunc Et ibid. dans ei* (then and there giving to him) a mortal Wound, &c. and that he languished from the 12th *usque ad* 13 Feb. on which 13th Day he died; and so
the

the said R. C. on the 13 Day did kill him : This is impossible, because the Word *usque* excludes the 13th Day. 1 Bullst. 203.

But where it was, That on the 22 *Januarii*, &c. *percussit*, the Person at B. *dans ei plagam mortalem* (he struck the Person at B. giving him a mortal Wound), &c. of which he died the 23d of *Feb.* following, and so he mureded him, *die*, &c. *præd.* (the Day, &c. aforesaid), that must refer to the Day last mentioned; for otherwise there being two Days mentioned, it would be uncertain to which it should relate, *viz.* either to the Day of the Stroke, or Death.

After the Beating or Hurting another, to make it Murder or Manslaughter, the Day and Year must be reckoned from the Stroke given, but an Appeal hath Relation to the Death.

But to return to the Word (*Murder*) as above defined, we may examine, *viz.* What is a Killing.

And this may be by several Means, as by	{	Bruising,	{	Smothering,	1. What is a Killing. H. P. C. 55.
		Crushing,		Strangling,	
		Famishing,		Weapon, and other Ways,	
		Poisoning,			
		Shooting,			

As by laying a sick Man in the Cold, hiding an Infant under Leaves or Trees, which is afterwards destroy'd by Vermin; stirring up a Dog or any other Beast accustomed to bite or do Mischief, knowing it to be such. H. P. C. 52.

Must be *in Rerum Natura* (in Being at the Time); for if a Woman take Poison to destroy the Child within her, being Quick, 'tis not Felony but a great Mispriison, unless born, and afterwards dies through this Occasion. 1. The Person killed. H. P. C. 53.

Advising to destroy it before born; and afterwards 'tis born and destroy'd, the Adviser is Accessary.

Wounded and dying beyond Sea, the Offender cannot be punished at Common Law, but may before the Constable and Marshal. 2. Within the Realm.

Wounding and dying upon the Sea, before the Admiral of England, by Virtue of the Statute of 28 H. 8. c. 13.

Striking on the Sea and dying *infra Corpus Comitatus* (within the Body of the County), is an Offence, which my Lord Hale tells us is not punishable, H. P. C. fol. 54. and yet 'tis not denied but that the Killing shall have Relation to the Death, and not to the Stroke. 4 Rep. 41. See after in this Title.

Striking in one County, and the Person dieth in another, the Trial shall be where he died. See the Act after-mentioned.

But Accessary in one County to a Murder done in another when the Principal is convicted, and that is certified, may be tried in the County where Accessary. *H. P. C.* 54.

4. Malice fore-
thought.
H. P. C. 44.

This is two-fold, { Implied,
 { Express.

Malice Implied, may be collected several Ways :

- (1.) From the Manner of the Fact.
- (2.) From the Person killed.
- (3.) From the Person killing.

From the Man-
ner of the Act
done.

By wilful Poisoning; by riding into a Fair with an unruly Horse, knowing him to be so, on Purpose to do Mischief, and Death ensues. *Moor* 754. *H. P. C.* 44.

Throwing a Stone over an House amongst a Multitude of People.

Nota ; By *Hale*, if there was an Intention to do Harm, it makes it Murder ; if not, 'tis only Manslaughter.

These and such like are unlawful Acts ; and it appears plainly, that the Person had an evil Intention of doing Hurt to some Body, though not against any Person in Particular ; and this implies Malice.

A Smith struck his Servant with an Iron Bar, and killed him. So if a Father corrects his Son, or a School-master his Scholar, with such Instruments as may probably kill them, and Death ensues, 'tis Murder.

So if a Smith runs a hot Iron into his Servant's Belly, or a Mother kicks and stamps on her Child's Belly, and Death ensues ; in all these Cases 'tis Murder, and the Law supplieth the Malice in Persons who are guilty.

Regina versus
Mawgridge.

But in a late Case we are told, That if a Man assault another with a dangerous Weapon, but without any Provocation, 'tis express Malice from the Nature of the Fact, which is cruel.

Two Men were beating another in the Streets, and a Stranger passing by, said, It was a Shame for Two to beat One ; whereupon one of them ran to the Stranger in a furious Manner, and with a Knife which he held in his Right Hand, gave him a mortal Wound, of which he died ; and both the other being indicted at the Sessions in the *Old Bailey*, 9 *Geo.* as Principals in the said Murder, the Judges who were then present, were of Opinion, that one of them could be neither Principal nor Accessary to the Murder, be cause he did not appear, that he intended any Injury to the Person who was killed : 'Tis true, both of them were doing an unlawful Act, but the Death of the Party did not ensue upon that

that Act; so one was acquitted, and the other found guilty of Murder.

Killing without a Provocation.

Such a Provocation as must extenuate the Killing from Murder to Manslaughter, must be where there is some actual Violence or Striking; for Words alone are no manner of Provocation, though they are never so opprobrious, nor any affronting Gestures, though never so reproachful.

Mackallie's
Case, 9 Rep. 57.
3 Cro. 770.
Watts and
Brains.
Kelynge 60.

But if angry Words pass between two Persons, and then one pulls the other by the Nose, or fillips him with his Finger, and the Person thus assaulted kills the other with a Sword; this is but Manslaughter, because the Peace was broken by the Deceased, and with a great Affront to him upon whom he made the Assault.

And here it may not be improper to mention *Mawgridge's* Case:

He threw a Bottle at Mr. *Cope*, which struck him on the Head, and immediately drew his Sword, and gave him a mortal Wound; but between the Time of drawing the Sword and giving the Wound, Mr. *Cope* threw another Bottle at *Mawgridge*, with which he broke his Head; but Mr. *Cope* had no Sword drawn, and never spoke a Word afterwards; this was adjudged Murder, and of Malice prepensed; for the Throwing the first Bottle was with a Design to do Mischief, and the Drawing his Sword was to prosecute that Design; and though Mr. *Cope* threw another Bottle at *Mawgridge* before the Wound was given, that will not alter the Case; for it was justifiable in him, and in his own Defence.

Kelynge.

If two Men fall out, and give each other foul Words, and a third Person strikes one of them and kills him, this is Murder.

So if *A.* assaults *B.* without any Provocation, and draws his Sword and runs at him, and then *B.* draws his Sword in his own Defence, and is killed by *A.* 'tis Murder.

But if two Men fight, and another Person coming to assist one of them, killeth the other, this is Manslaughter, because there was an actual Fighting, and Striving with Violence between the other two.

Yet if a Man is unduly arrested or deprived of his Liberty, and makes no Resistance, and another rescuing him kills a Man, this is Murder; for Injuries must not be redressed by Force. *Kelynge* 60, 61. 2. For they in that Case granted the Offender his Clergy; and vide *Kelynge* 137.

If one who is wounded neglects his Cure, or lives disorderly; yet if he die of those Wounds, 'tis Murder or Manslaughter, as the Case shall appear upon the Evidence against the

the

From the Per-
son killed,
Godb. 154.

the Criminal, because the Wounds were the principal Cause of the Death which ensued. *Kelynge* 26. *Reu's* Case.

Stabbed *without Weapon drawn*, Malice is implied. 1 *Jac.* cap. 8.

Five Years after the Making this Statute, it was held, That if the Person killed had a *Stick* in his Hand, it shall be accounted a *Weapon drawn*.

And since that Time there have been many nice Exposi-
tions of this Law, the Words are, *viz.* Stabbing another that
hath not *then any Weapon drawn*, or that hath not *then first*
stricken the Party which stabs, and the Person dying within
six Months then next following, this is Murder, and without
Clergy. There is a Proviso, That the Act shall not extend
to one who kills another *se Defendendo*, or by Misfortune;
nor to one who in keeping the Peace, or chastizing his Ser-
vant or Child, shall unwillingly commit Manslaughter.

Jones 347.

Anno 9 *Car.* 1. One *Byard* struck *Ward*, who struck
again, and then *Byard* stabbed the other with a Knife; the
Question was, Whether he should have his Clergy, because
he was struck by the other before he stabbed him; And ad-
judged he should not, because the Words *first stricken* in the
Statute shall be construed the very first Stroke given by the
Party slain at the Beginning of the Quarrel, and not any
Stroke before the Stab.

4 Rep. 57.
9 Rep. 66.

So where two quarrel, one throws a Pot at the other,
which missing him, the other drew his Sword and killed
him; and being indicted on the Statute of Stabbing, the Mat-
ter was found Specially, and the Doubt did arise upon the
Words of the Statute, *viz.* He that stabs another, not having
a Weapon then drawn, &c. whether the Particle *then* should
relate to the Beginning of the Quarrel, or to the Time of
the Stroke given? And by the better Opinion it was held to
extend to the Quarrel; for if in fighting one lets his Sword
fall, or throws it at another, and is then killed, 'tis plain he
had not then a Weapon, *viz.* at the Time of the Wound
given; but yet, because it was once drawn during the Quar-
rel, the Prisoner shall not be excluded his Clergy. 3 *Levinz*
255. *King and Hunter*.

Jones 432.

Anno 15 *Car.* One *David Williams*, walking on *St. Da-
vid's* Day with a Leek in his Hat, was jeered by a Porter;
and thereupon *Williams* took a Hammer out of *Marbury's*
Shop, and threw it at the Porter, with an Intention to hit
him, but he missed the Porter and struck *Marbury*, of which
he died; the Question was, Whether this was within the
Statute of Stabbing; for *Marbury* had no *Weapon drawn*?
And adjudg'd, that it was not. There is no Reason given
for this Judgment by Justice *Jones*, who reports the Case;
but I suppose it might be, because *Williams* had no Anger or
Displeasure against *Marbury*, and so was within the Proviso
of

of the Statute, which exempts any Killing by *Misfortune*, as this seemed to be.

But it seems *Williams* was not indicted for Murder, but for Manslaughter, on the Statute of Stabbing; if he had been indicted for Murder, he ought to have been found guilty, for the Provocation was not so great as to excite him to kill another. *Kelynge* 133. Cited in *Mauvridge's Case*.

If the Indictment is, that *R.* stabbed the Person, and that *P.* and *H.* were present and abetting, and they are all found guilty, *R.* shall be hanged, but the other Persons shall have their Clergy; and if it can be known who gave the Stab, then, though in Judgment of Law all those who were present and abetting are Principals, yet the Statute being so penal, ought to be extended only to him who actually flabb'd the other. Allen 44.

Constable killed, or any assisting him in Execution of his Office; the like of any other Magistrate.

This is Murder, but then you must know he was Constable, and coming to keep the Peace, and for that Purpose he ought to command them in the King's Name to keep the Peace, otherwise 'tis but Manslaughter in him that kills him.

Officer killed in the Execution of a lawful Warrant, tho' he doth not shew it, being demanded, and though there is a Mistake or Error in the Process; but then he must be doing what is warranted by Law; for if he open a Window to arrest, &c. and is killed, 'tis only Manslaughter. *March* 3. 4 Rep. 91.
Cro. Car. 537.
Coke's Case.

An Officer had a Warrant to arrest *Sir H. Ferrars*, Knt. but he was a *Baronet*, and never Knighted, and the Officer was killed in executing his Warrant; this was held to be Manslaughter, because he had no Authority to arrest the *Baronet*, and so his Warrant was illegal. Sir H. Ferrars's
Case, Cro. Car.
372.
Jones 346.

All who are present and assisting a Person arrested, are principal Murderers, if the Officer is killed, or not knowing. *Per Kelynge* 86, 87. S. C. King and Stanley,
Sid. 160.

A Collector of the Chimney-Money distrained a Silver Cup, the Maid Servant in the Absence of her Master hinder'd him from going out, for which he beat her against the Post and killed her; this was held to be Manslaughter. Goff's Case,
1 Vent. 216.

Several come to rob a Park, one kills the Keeper, 'tis Murder in the other, if in the same Park, though at a Distance when the Fact was done, because their Entry was unlawful, and from thence Malice may be implied. *Palm.* 35. Jones 429.
2 Rol. & rep 120:
Lord Daere's
Case, Moor 86.

Several Owlars had loaded Wool to transport it, the King's Officers opposed them in the Night; one of the Owlars shot out of a Fuzee and killed one of his own Company; this was held by all the Judges to be no Murder, because it was not found that he discharged the Gun against the King's Officers, tho' it might be reasonably intended he did, because he was armed, and in Prosecution of an unlawful Act, in which he King and Plummer,
Keel. 109.
S. C.
Vide Moor 87.

he was was obstructed; and in such Case, if he had killed one of his own Party, though by Accident, it had been Murder in him, but not in the Rest, unless they knew his Design was to kill the Man.

From the Person killed.

One assaults another with an Intention to rob him, and being resisted kills the Party he assaulted, 'tis Murder.

If a Gaoler by hard Usage kills a Prisoner, like Offence.

Executing of Martial Law in Time of Peace, is Murder.

Malice may be collected out of Circumstances, shewing the Temper of the Person killing.

As if two fight in a Tavern and are parted, and one of them alledgeth the Inconveniency of that Place to fight in, and they appoint another Place, and fight presently, where one is killed; 'tis Murder, because Reason had so much the Mastery of his Passion, as to judge of the Conveniency of the Place. *Sid.* 277. *Lord Morley's Case*, 1 *Bullst.* 86. 3 *Bullst.* 171.

If two fall out in the Morning, and fight in the Afternoon, and one is killed, 'tis Murder, for there being Time to allay the Heat, the second Meeting must be in Malice.

* *Dalton* 315.
Lamb. 25.
230.

Yet * *Mr. Dalton* tells us, if one wound the other, and afterwards they meet, and the wounded Man kills the other, 'tis Murder in him, for Malice shall be intended upon his former Hurt; but if the other kill the wounded Man, 'tis only Manslaughter in him, because it shall be intended his Malice was appeased by giving the Wound; which is very nice.

But some Provocations are so violent, that they mitigate the Crime; as where two Boys fought near their Father's House, and one being bloody, complained to his Father, who was then a Mile off, but he went and beat the Boy so, that he died; 'tis not Murder. *Godb.* 182. 2 *Cro.* 296. *Royley's Case*.

Raym. 210.

Upon an Indictment for Murder the Jury found, that the Defendant *Manning* caught his Wife in the Act of Adultery with the Person slain, and that he immediately flung a Joint-Stool at him, and with the same killed him; adjudged only Manslaughter, and he was gently burnt in the Hand, for there could not be a greater Provocation.

2 *Mod.* 68.
King and Francis.

Dangerfield was convicted for publishing a Libel against the King, and was sentenced to pay 500 *l.* and to be whipt from *Aldgate* to *Tyburn* on *Thursday*, and from *Newgate* to *Tyburn* on the next *Saturday*, which was done; and as he returned in a Coach from *Tyburn*, some Words passed between him and one *Frances*, who run him into the Eye with a small Cane, of which Wound he died on the *Monday* following, and *Frances* was indicted and convicted of Murder, and executed.

Malice

Malice express may appear,

As if a Man is resolved to do an unlawful Act, as to rob an Orchard, and Death ensueth, 'tis Murder. In the Principal who doth the Act. 1 Rol. Rep. 363.

Malice between Two, they fight, tho' the Deceased give the first Stroke, 'tis Murder in the other. 1 *Bulst.* 86. 3 *Bulst.* 171, 172.

If the Deceased challengeth another, who refuseth to fight, but afterwards upon Importunity meeteth and kills him, 'tis Murder.

All who are present and assisting, are Principals. *Sid.* 160.

If they are not present, yet if they come to do an unlawful Act, and are in the same House or Place, though at a Distance, 'tis Murder in them.

In a Riot at *May Fair* a Constable was killed, and not known by whom: *A.* was indicted for it and acquitted, *B. C. D.* and *E.* were indicted as Persons present, *assisting, aiding and abetting* him therein; it was proved that *E.* first drew his Sword, and with several others assaulted the Constables, and that the Riot continued for an Hour, or more; it was held in this Case, that upon Proof of a Murder done *E.* is a Principal, for he begun the Riot, which continuing till a Murder was committed, he is a Principal Murderer, though he did not the Act.

Though Death be not intended, if the Act be deliberate and malicious, and Death ensueth, 'tis Murder: As the Keeper of a Park finding a Boy stealing Wood, tied him to a Horse's Tail, which in running away killed the Boy; this was Murder, because a deliberate Act. *Cro. Car. Holloway's Case* 131, 132. Jones 198. Palm. 547.

Malice between Two, the one striketh at the other and kills a third Person, 'tis Murder; and if no Malice between them, 'tis Manslaughter. Malice intended to one, and Death of another ensueth.

Malice between Two, and the one assaulting the other, kills his Servant coming to his Defence, Murder. *Dyer* 128. b.

One buys Poison to kill another, and a third Person eats it and dies, Murder. *Plowd. Com.* 473, 476.

Two or more come to do an unlawful Act, one of them kills a Man, 'tis Murder in both, if abetting or ready to abet, though but looking on. Vide *Plummer's Case* in *Kelynge*. Principals in the second Degree, Aiding and Abetting.

But then the Abettor must know the malicious Design of the other, and the Killing must be in Pursuance of that unlawful Act, and not collateral to it.

And

And not only so, but it must be done deliberately; for if it is upon a sudden Affray, and Death ensues, 'tis but Manslaughter.

Besides the unlawful Act ought to be such which tends to the Hurt of another, either immediately, or by Consequence; as if Persons assemble in a riotous Manner with offensive Weapons, and one is killed, 'tis Murder.

5 Mod. 287.
King and Keat,
adjourned.

In a special Verdict on an Indictment at Common Law and the Statute of Stabbing, for Murder, the Case was, The Deceased was a Gardener, his Master sent for the Key of the Garden Door, which he refused to deliver; thereupon the Master fetched his Sword which lay in the next Room, and expostulated with the Gardener about the Delivery of the Key, who giving a rude Answer, the Master struck him on the Head with his Sword, and he having a Scithe in his Hand struck at his Master, who killed him with his Sword; it was insisted, though Death might not be intended at first, yet the Master being doing an unlawful Act, and Death ensuing, the Law implies *Malice*; that a *Sword* was not a proper Weapon to correct a Servant, therefore the Act was unlawful, and the ill Event shall be coupled to the Act, and the Servant's Striking the Master was after the unlawful Act, and in his own Defence; but adjudged, that the Law will not imply *Malice*, unless the unlawful Act itself extended to Death, for every Trespass is an unlawful Act, but if Death ensues, it will not be Murder; it is an unlawful Act to fight a *Duel*, but yet if two fall out and presently fight, and one is killed, it is *Manslaughter*; besides the unlawful Act must not only extend to Death, but it must be voluntary and done *sedato animo* (with a sedate Mind); for if it was involuntary and in Passion, 'tis not material who was the first Aggressor.

Two having Malice fight; the Servant of one of them not knowing the Malice, &c. killeth the other; this is Murder in the Master, and Manslaughter in the Servant.

In the Accessory before the Fact.

One commands another to kill a third Person with a Gun, he kills him, not by Shooting, but with a Sword; 'tis Murder in the Person commanding.

But if by Mistake he kills another Person, 'tis Murder in him killing, and the Person commanding is not so much as Accessory to it.

If one command another only to beat a third Person, and upon this Beating Death ensueth, 'tis Murder in the Person commanded, to which he who commanded is likewise Accessory, because Death ensued upon that unlawful Act of Beating.

In the War with France, Mr. Mansell seized some French Goods at Sea, and brought them Home, and one Herbert pretending to be Deputy Admiral, came with Force to Mr. Mansell's House, and assaulted those who kept Possession of the

the Goods; a Gentlewoman came to the Door without any Weapon, and was killed with a Stone, which was thrown by Mr. *Herbert's* Servant at another; and it was held, that this was Murder in Mr. *Herbert* and all his Company; for the Person was killed in Defence of the Possession of the House, and that made it Murder, though there was no Malice prepensed. Serjeant *Moor*, who reports this Case, says, That the Person killed was Aunt to both the Gentlemen, and persuaded them to be Friends. *Moor* 87. *Dyer* 128. b.

The Judgment in Murder must be the common and ordinary Judgment allowed by Law; and it cannot be, that the Offender shall be hanged in Chains, though for a notorious Murder, as for stabbing the Duke of *Buckingham* by F. but when he is dead, the Body is at the King's Disposal. Hut. 126.

By the Statute of 24 H. 8. c. 5. 'tis enacted, That if any Person should be indicted for the Death of another attempting to murder, rob, or commit Burglary, and 'tis so found by Verdict, he shall forfeit no Lands or Goods, but shall be acquitted. A Man in the Night-time attempted to break open the Door of a Dwelling-house, and one who was only a Lodger would have dissuaded him from it, who thereupon broke the Window, and thrust his Rapier at the Lodger, who with a Spit wounded the Rogue in the Eye, of which Wound he died; this was held not to be Felony, but excusable by this Statute, though it was done by a Lodger, and not by the Master of the House in Defence of his Possession. See in Appeal.

I shall add one Case more to this Title, but it is a very strange one, *viz.* Husband and Wife had lived many Years together, and became very poor; the Man told his Wife, He was very weary of Living, and that he would kill himself, the Woman replied, She would die with him: Thereupon he desired her to buy Rats-bane, and they should put it into Ale, and drink it together; she bought it and put it into the Cup, and both drank. The Wife considering what she had done, took Sallet-Oil, and expelled the Poison by Vomiting, and recovered; and the Man died. The Question was, Whether this was Murder in the Wife? I do not find it was resolved. *Moor* 754.

By a Statute made in the Reign of King *James* I. it is declared, That where a Bastard-Child shall be concealed, it shall be taken to be born alive; and if it is dead, it shall be adjudged to be murdered; so that by this Statute, Concealment of the Birth of a Bastard is made the Crime. Now if a Woman is with Child of a Bastard, and going well to Bed, is taken with Travailing Pains in the Night, and knocks for some Body to assist her, but is deliver'd without any Help, and then puts the Child in a Trunk, and conceals it for a Day; if there was no Sign of any Hurt upon the Body of the Child, 'tis not Murder within that Statute, because at
first

first there was no Intent to conceal it; and there being no visible Sign of Hurt, it shall be intended the Child was dead born; but if there had been an Intent to conceal it, then 'tis Murder, though the Child was not born alive.

So that the Concealment being by the Statute made an Evidence of the Murder, the Indictment may be *Quod Infantem masculum vivum parturit qui quidem infans masculus adtunc & ibidem vivus existens natus per legem hujus Regni Angliæ spurcius fuit* (*Anglice*, a Bastard) (That she brought forth a living Male Infant, which said Male Infant being then and there born alive, was a Bastard by the Laws of this Kingdom of England), and so on in the ordinary Form; and conclude, *contra Pacem* (against the Peace), and not *contra formam Statuti* (against the Form of the Statute): For the Statute doth not make any new Offence, but declares what shall be Evidence of the Murder. *Kelynge* 32. *Anne Davis's Case*.

Where a Person is found guilty of Murder upon the *Coroner's Inquest*, *B. R.* may bail him, because the Proceedings before him are upon Depositions in Writing, which may be seen by the Court; but if found guilty by a *Grand Jury* he cannot be bailed, because the Court cannot know what Evidence they had: This was the Lord *Mobun's Case*. *M. 9 W.*

Neither shall a Man found guilty by the Grand Jury be bailed upon *Affidavits* read of the Evidence, though it is not sufficient to convict him, because this may discourage a Prosecution; for if the Court should give any Opinion of the Evidence upon reading the Affidavits, it might be prejudicial to the Prosecutor or Prisoner.

An Indictment for Murder with a Sword.

Dyer 304.

Suffex, to **T**HE Jurors, &c. That J. O. late of H. in the said County, Yeoman, not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the 6th Day of August in the 9th Year of the Reign, &c. about nine of the Clock in the Evening of the same Day, at H. aforesaid in the said County, by Force and Arms did make an Assault in and upon one T. P. then and there being in the Peace of God, and of our said Sovereign Lord the King, and that the said J. O. at H. aforesaid in the said County, did feloniously, wilfully and of his Malice forethought strike and wound the said T. P. with a Sword, of the Value of three Shillings, which the said J. O. had and held then and * there drawn in his Right Hand, and did feloniously, and of his Malice forethought at H. aforesaid in the said County, give to the said T. P. one mortal Wound with the Sword aforesaid, in and upon the right Part of his Thigh, of the Length of three Inches, and

* If the Word (there) had been omitted, the Indictment would have been ill.
He. t. 35.

and of the Depth of two Inches, of which said mortal Wound the said T. P. at H. aforesaid in the said County † languished, and languishing lived from the said 6th Day of August in the Year abovementioned, to the 9th Day of the said Month of August, on which said 9th Day of August in the Year abovementioned, the said T. P. at H. aforesaid in the said County, died of that mortal Wound; and so the said Jurors upon their Oath aforesaid say, that the said J. O. on the said 9th Day of August in the Year above-mentioned, at H. aforesaid in the said County, did feloniously, wilfully, and of his Malice forethought, kill and * murder the said T. P. in the Manner and Form aforesaid, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

† If he died presently, then say, instantly died.

* This Word doth supply (of his Malice forethought). Dyer 68. contra 99, 304. C o. Eliz. 900.

I find a Case where *Murderavit* instead of *Murdrawit*, was held ill; but that *Burgalariter* for *Burglariter* was held good; and the Reason was, That 'tis as good a Word as *Burglariter*: I admit that they are both Words of Art adapted to particular Offences, and both in Sound express the different Crimes; but I can see no Reason why *Murderavit* should not be as good a Word as *Burgalariter*; for in one there is only the Addition of an *e*, and in the other of an *a*: This is a Nicety, which like the Word itself, is to be found nowhere but amongst the Lawyers. The *English* will help it.

For Murder with a Gun.

[As in the former Precedent to the Words, in the Peace of God, and our said Sovereign Lord the King.]

And that the said J. O. feloniously, wilfully and of his Malice forethought did then and there discharge upon and against him the said T. P. a certain Hand-Gun, of the Value of eight Shillings, then and there being charged with Gun-powder and Bullets; which said Gun, the said J. O. then and there had and held in his Hands, by reason of the Discharge of which said Gun, that was so charged as aforesaid, the said J. O. at H. aforesaid in the said County, feloniously, wilfully, and of his Malice forethought, did strike, pierce and wound the said T. P. upon the Right Pap of him the said T. P. with the said Bullets discharged from the said Gun by the said J. O. so as is before related, and did feloniously, and of his Malice forethought, at H. aforesaid in the said County, give to the said T. P. one mortal Wound, with the said leaden Bullets discharged from the said Gun, by the said J. O. so as is before related, upon the said Right Pap of him the said T. P. of the Length, &c. [as in the last Precedent]. 5 Coke 120.

By breaking the Neck.

[As in the former Precedent to the Words *Lord the King.*]

And that the said J. O. at H. aforesaid in the said County, did violently, feloniously, wilfully and of his Malice forethought, fix and place his Hands about the Neck of him the said T. P. and the said J. O. did then and there feloniously, wilfully and of his Malice forethought break the Neck of him the said T. P. with his Hands, so as is before related, to be then and there violently and of his Malice forethought fixed and placed about the Neck of the said T. P. of which said Breaking of his Neck the said T. P. then and there at H. aforesaid in the said County instantly died; and so the said Jurors upon their Oath aforesaid say, &c. as in the other Precedent.

Upon the Statute of Stabbing, 1 Jac. cap. 8.

1 Jac. 1. c. 8. Suffex, to **T**HE Jurors, &c. That R. P. late of H. in wit, the said County, Yeoman, not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the sixth Day of August in the ninth Year of the Reign, &c. by Force and Arms, &c. at H. aforesaid in the said County, did feloniously make an Assault in and upon one R. O. then and there being † in the Peace of God and of our said Sovereign Lord the King, the said R. O. not having any Weapon then drawn, and not having then first stricken the said R. P. and that the said R. P. did then and there feloniously stab and thrust the Belly of him the said R. P. with a certain Sword of the Value of five Shillings, which he the said R. P. then and there held in his Hand, the said R. O. not having any Weapon then drawn, and having not then first stricken the said R. P. as aforesaid, and that he the said R. P. at H. aforesaid in the said County, did give to the said R. O. one mortal Wound with the said Sword in and upon his Belly aforesaid, of the Breadth of one Inch, and of the Depth of two Inches; of which said mortal Wound the said R. O. then and there instantly died; and so the Jurors aforesaid upon their Oath say, that the said R. P. on the said 6th Day of August in the Year above-mentioned, at H. aforesaid in the said County, feloniously did kill and † murder the said R. O. in the Manner and Form aforesaid, contrary to the Form of the Statute in such Case made and provided, and also against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

† These Words must be in, for he may be a Traitor and flying, and so lawful to kill him.
Godb. 64.

† If that Word is not in, 'tis no more than Homicide.
Dyer 261 a.
394 b.

An Indictment for Murder of a Child, by starving it.

Suffex, to **T**HE Jurors, &c. That one A. P. of H. in
quit, the County aforesaid, Spinster, being great
with Child with a Male Infant alive, on the 7th Day of Au-
gust in the ninth Year of the Reign, &c. at H. aforesaid in the
said County, did bring forth the said Child alive; and that
afterwards, that is to say, on the same Day and Year above-
mentioned, the said A. P. not having God before her Eyes, but
being moved and seduced by the Instigation of the Devil, by
Force and Arms, &c. at H. aforesaid in the said County, did
feloniously, wilfully and of her Malice forethought, make an
Assault in an upon the said Male Infant alive, and at H.
aforesaid in the said County, did throw down upon the Ground,
and then and there feloniously, wilfully and of her Malice fore-
thought refuse and intirely neglect to cherish, nourish and feed
the said Male Infant, being alive, by reason of which said
throwing upon the Ground, and Neglect to cherish, nourish and
feed the said Infant, being alive, the said Child then and there
instantly died; and so the Jurors aforesaid upon their Oath
say, that the said A. B. at H. aforesaid in the said County,
on the seventh Day of August aforesaid in the Year above-
mentioned, did feloniously, wilfully, and of her Malice fore-
thought, kill and murder the said Male Infant in the Manner
and Form aforesaid, against the Peace of our said Sovereign
Lord the King, his Crown and Dignity.

For strangling of a Bastard Child.

Suffex, to **T**HE Jurors, &c. That one A. P. of H. in the Dyer 186.
quit, County aforesaid, Spinster, being great with
Child with a Male Infant alive, on the seventh Day of Au-
gust in the ninth Year of the Reign, &c. at H. aforesaid in the
said County, did privately and secretly bring forth the said Child
alive, which said Male Infant being so alive and born, by the
Laws of this Kingdom was a Bastard, and that the said
A. P. not having God before her Eyes, but being moved and
seduced by the Instigation of the Devil, on the said 7th Day of
August in the same Year above-mentioned, and so soon as the
said Child was born, by Force and Arms, &c. at H. aforesaid
in the said County, did then and there feloniously, wilfully, and
of her Malice forethought make an Assault in and upon the
said Male Infant being alive in the Peace of God, and of our
said Sovereign Lord the King; and that the said A. P. felo-
niously, wilfully, and of her Malice forethought, at H. afore-
said

said in the said County, did strangle the said Bastard Child being so alive, with her Hands fasten'd about the Neck of the said Child, of which said Strangling the said Bastard Child then and there instantly died; and so the Jurors aforesaid upon their Oath say, that the said A. P. at H. aforesaid in the said County, on the seventh Day of August aforesaid in the Year above-mentioned, did feloniously, wilfully, and of her Malice forethought, kill and murder the said Bastard-Child in the Manner and Form above-mentioned; and further the said Jurors upon their Oath present, that E. M. late of H. in the County aforesaid, Spinster, on the said seventh Day of August in the 9th Year above-mentioned, and on divers other Days and Times before the said Felony and murder committed in Manner aforesaid, at H. aforesaid in the said County, did maliciously and feloniously comfort, aid and abet the said A. P. to commit the said Murder, and to kill and murder the said Child, against the Peace of our said Lord the King, his Crown and Dignity. And moreover, that J. O. of H. aforesaid in the said County, and K. O. of the same Place, Spinster, after the Murder and Felony aforesaid committed in Manner aforesaid, knowing that the said A. P. had done and committed the Murder and Felony aforesaid, at H. aforesaid in the said County, on the 9th Day of August in the same Year above-mentioned, did feloniously comfort and receive the said A. P. against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Stat. 2 Geo. 2. c. 21. For the preventing of any Failure of Justice, and taking away all Doubts concerning the Trial of Murders in the Cases after-mentioned, it is enacted, That where any Person after the 24 June 1729 shall be feloniously stricken or poisoned upon the Sea, or at any Place out of England, and shall die of the same Stroke or Poisoning in England; or where any Person shall be feloniously stricken or poisoned at any Place within England, and shall die of such Stroke or Poisoning upon the Sea, or at any Place out of England; in either of the said Cases, an Indictment thereof found by Jurors of the County in that Part of England, in which such Death, Stroke or Poisoning shall happen respectively, whether it be found before any Coroner, upon View of such dead Body, or before the Justices of the Peace, or other Justices or Commissioners, who shall have Authority to enquire of Murders, shall be as good and effectual in the Law, as well against the Principals in such Murder, as the Accessaries thereto, as if such felonious Stroke or Poisoning, and Death thereby ensuing, and the Offence of such Accessaries had happened in the same County, where such Indictment shall be found; and also any superior Court, in Case such Indictment be removed into such superior Court, shall proceed on the same in all Points, as well against the Principals in

any such Murder, as the Accessories thereto, as they might or ought to do, in case such felonious Stroke or Poisoning, and Death thereby ensuing, and the Offence of such Accessories had happen'd in the same County, where such Indictment shall be found; and every such Offender, as well Principal as Accessary, shall answer unto their Arraignments, and have the like Defences, Advantages and Exceptions, (except Challenges for the Hundred), and shall receive the like Trial, Judgment, Order and Execution, and suffer such Forfeitures, Pains and Penalties as they ought to do, if such felonious Stroke or Poisoning, and Death thereby ensuing, and the Offence of such Accessories had happen'd in the same County, where such Indictment shall be found.

Muster.

Muster-Master commanding any Person to muster, and if the Person so commanding absents, not having a lawful Excuse; or if he comes, and doth not bring his best Arms, he is to be committed for ten Days without Bail, unless he agree to pay 40 s. as a Fine to the King. 4 & 5 P. & M. cap. 3. f. 2.

Any Person authorized to muster or levy Soldiers, taking any Reward to discharge or spare any from the Service, forfeits ten times as much. Sect. 3.

A Captain, or other Officer, licensing a Soldier to depart, must pay him Wages then due, and Coat and Conduct-Money, or forfeits ten Times as much between King and Prosecutor, and to the Soldier three Times as much as should be paid to him. Sect. 4.

Justices of Peace may hear and determine these Offences, and, upon Conviction of the Offender, may commit him without Bail till Forfeiture paid. Sect. 5.

He who gives, or procures to be made or given, any *false Certificate* to excuse a Soldier from a Muster or other Service, forfeits 50 l. and shall be cashiered; and no Certificate shall excuse a Soldier but for Sickness, or being employ'd in Recruits or Parties; and the Commissary of the Musters must at the Time of the Muster set down on the Roll, the Reason of the Absence of each Soldier. 14 Geo. 2. c. 2. f. 8.

Officer making false Muster of Man or Horse, and Commissary, Muster-Master, or other Person signing such Muster-Roll, upon Proof thereof on Oath by two Witnesses, before a Court Martial, shall be cashiered, and forfeits 100 l. and be disabled to hold any Place Civil or Military in his Majesty's Service. Sect. 9.

But

Gutter. Guts.

But fictitious Names allow'd by his Majesty's Order upon the Muster-Rolls, for the Maintenance of Officers Widows, shall not be accounted a false Muster. §. 10.

Sec. II.

Muster-Master must upon any Muster give convenient Notice to the Mayor, or other chief Magistrate of the Place where the Soldiers so to be muster'd shall be quarter'd; he neglecting forfeits 50*l.* and shall be discharged; and no Muster Roll shall be allowed unless signed by the Mayor, &c. who must be present upon Notice given, otherwise the Commissary may proceed to muster without him, upon Oath made before a Justice of Notice given, within forty-eight Hours afterwards, and producing to the Justice the Roll to be examined by him, who may then sign it.

Sec. 12.

Any Person falsely muster'd, or offering himself to be deceitfully mustered, on Proof thereof on Oath of two Witnesses before the next Justice of the County where the Muster was made; and on a Certificate thereof under the Hand of the Commissary to the Justice, he shall send such Person to the House of Correction for ten Days.

Sec. 12.

A Horfe lent to be mufter'd, and not truly belonging to a Trooper, fhall be forfeited to the Informer, if 'tis the Horfe of the Lender, otherwife he forfeits 20 l. upon the Proof of two Witneffes on Oath, before one Juftice.

Secd. 13.

The Forfeiture of an *Officer* is to be paid out of his Arrears upon Conviction before a Court Martial, upon their Order to the Paymaster; and if no Arrears due, then his Goods shall be taken and sold by the like Order; and if no Goods he shall be sent by the like Order to Gaol for six Months, and the Informer shall have the Forfeiture; and the Soldier shall be discharged, if he desires it.

Quote.

THIS is of two Kinds, {
1. When he answers not.
2. When he answers not directly.

In the one Case it must be inquired, Whether he is mute by the Act of God, or by Malice; if by the Act of God, then you must inquire of the Felony, and whether he is the same Person; if by Malice, then he shall have Judgment, and so he shall if he doth not answer directly.

Dyer 241.

To be mute in Treason, is a Conviction, and shall suffer as a Traitor.

After Attainder, standing mute, must be executed.

In Appeal, must be hanged.

But

But in Felony 'tis, that the Offender be remanded to Prison, and laid in a low and dark Room naked on the Ground, and on his Back, and his Arms and Legs extended by Cords, and Iron or Stone laid on his Body, something more than he can bear; next Day he shall have three Morfels of Barley-Bread without Drink; the third Day he shall drink thrice of the Water next the Prison, but not Running-Water, and shall have no Bread; and thus he shall be kept till dead, so that he dies *Onere, Frigore & Fame* (by Pressure, Cold, and Hunger); and besides this, he forfeits his Goods.

This must be understood of such Felony for which he is not to have his Clergy, otherwise, if he is mute, he shall have Clergy. Moor 550. Winter's Case.

Navigation. See Rivers.

Needle-Work. See Bone-Lace.

Pets. See Hunting, Partridges, and Pheasants, Dogs, Fish.

News.

Contriver, Speaker or Teller of false News, Lies, or other false Things, whereof Discord or Slander may arise, shall be committed till he find out the Author; and if he cannot find him out, then shall he be punished by the Advice of Counsel.

This is appointed by several Statutes which are now of no Force. 3 Ed. 1. c. 33. 1 & 2 Ph. & M. c. 3. 1 Eliz. c. 6. 23 Eliz. c. 2.

News-Papers. See Pamphlets.

Night-Walkers, Pilferers, &c.

IF suspected to be of ill Fame, may be apprehended, viz. such who sleep by Day, and haunt Bawdy-houses at Night, or keep suspicious Company; these may be compelled to find Sureties for Good Behaviour by a Justice of Peace.

13 H. 7. c. 10. Poph. 208. Latch 199.

They may be indicted at the Sessions. Poph. 208. Bent. 192. Latch 135, 173.

Noblemen.

Noblemen. See Peers.

N One are Noble under the Degree of a Baron.

A Warrant of the Peace is not to be granted against a Lord of Parliament, nor against a Duchess, Countess or Baroness; for they have the same Privilege with Dukes; &c.

But this must be understood of those who are Noble by Creation or Birth; for if they are only Noble by Marriage, and the Husband dieth, and then they marry Gentlemen, they lose their Dignity.

Norwich.

N One shall make Mats, Ceverlets or Dornicks, in *Norwich*, unless licensed by two Justices in that City; nor in *Norfolk*, but in Corporate Towns. 5 & 6 Ed. 6. cap. 24.

After the first of *May* 1726. there shall be paid by every Master or other Person having the Command, Rule, Management or Working of any Boat, Keel, Lighter, Hoy or other Vessel, which shall pass up the common River higher than *Thorp-hall* in *Thorp* next *Norwich*, towards that City, before they unlade any Goods or Merchandises, the respective Tolls mentioned in the 12 Geo. 1. c. 15. which see in the Statutes at large.

Vide 9 Geo. 1. c. 9. in relation to the Election of Sheriffs, &c. and 3 Geo. 2. c. 8. for the Election of a Citizen to serve in Parliament, and how far the Justices of the City are interested therein.

Norwich Stuffs.

Raym. 192.
Number of
Wardens and
Assistants.

BY Stat. 13 & 14 Car. 2. c. 5. §. 2. in *Norwich* and the County of *Norfolk*, there must be twelve Wardens and thirty Assistants, who within fourteen Days after they are chose, and Notice thereof, must take an Oath before the Mayor faithfully to discharge their Office. If they refuse to be sworn, or die afterwards, and before the End of the Year, the Master-Weavers may chuse others,

Half

Half of the Wardens are to be chosen on *Whit-Monday*, Sect. 2.
by the greater Part of the Master-Weavers in the City then
present: Half of the Assistants on the same Day, by the
greater Part of the Weavers of the County then present. When they are
to be chosen,
and by whom.
Their Duty
when chosen.

Seven of the Wardens and Assistants may meet when they
please, or as often as desired by the Assistants. §. 3.

Wardens of the City must give personal Notice to two of
those in the County where they intend to meet, by setting
such Notice upon the Door of their Sealing-Hall, fourteen
Days before. 1 Concerning
their Meeting.

Two of them may search in the publick Places for Sale,
and seize defective Yarns, and within twenty Days afterwards
bring them to a Trial by Jury, which may impose Fines on
the Yarns, not exceeding Half the Value, to the Use of the
Poor of the Trade. 2. Concerning
their Search-
ing.

Which being confirmed by the Mayor and two Justices of
the City, and three of the County (*Quorum unus*) shall be
published four Times in a Year, at four Assemblies for Trade,
and may impose Fines, not exceeding 10 s. for every Offence. Sect. 3, 4.
3. Power to
make By-
Laws.

Being convicted by Oath of one Witness, or by his own
Confession, before the Mayor or a Justice of the Peace of the
City or County, forfeits 40 s. Sect. 5.
Sect. 19.
Punishment of
those who di-
sturb them.

At their four Assemblies for Trade, they are to account
before the Mayor and one Justice of the City, and two of
the County for what Fines and Forfeitures they have received,
and what they have laid out concerning the Trade, and
what remains by the said Mayor and Justices, to be divided,
as they shall direct, between the Poor of the Trade of the
City and County. Sect. 22.
When they are
to account.

They must be twelve Artificers, Half of the City, and
Half of the County; they must be impanelled by Precept
from the Mayor or Deputy; and if any being summoned
refuse to appear, forfeits 5 s. to the Poor of the Trade. Sect. 10.
Jury, how to
be impanelled.
Sect. 20.

All Stuffs, in which there is Wool, must be under the Re-
gulation of Wardens and Assistants, and must be brought
to Weavers-Hall in *Norwich* before they are exposed to Sale;
and if found good, then sealed; if defective, they must be
tried by a Jury, &c. who may set Fines not exceeding Half
the Value of the Stuffs, for the Use of the Poor of the Trade,
and detain them till paid, and sell them, if not paid within
forty Days after Trial. Sect. 10.
Stuffs, sealing
them.

They, in whose Possession unsealed Stuffs shall be found,
forfeit 40 s. *per* Piece, and the Maker or Seller 4 s. for sel-
ling them unsealed, to the Use of the Poor of the Trade. Sect. 13.

If Wardens seal Stuffs which shall be found defective by
Jury, such Jury may set Fines on the Warden of 40 s. for
every Stuff; but Wardens shall have double Damages for un-
just Vexation. Sect. 11, 12.

Sect. 14.

Persons convicted before the Mayor or a Justice of the City or County, by Confession or Oath of two Witnesses, of counterfeiting the Seal, or sealing therewith, or removing the Seal from one Piece to another, forfeit 20 l.

Sect. 16.

Every Person must have his proper Mark upon every Piece by him made, or forfeit 3 s. *per* Piece to the Poor of the Trade.

Sect. 20.

Forfeitures, &c. Are to be levied by Distress, &c. by Warrant from Mayor or Justice, or by Action of Debt, Indictment or Information.

Sect.

Yarns,
Worsted.

Must be reeled on a Reel of a Yard about, and every Reel-
Stuff must have Lees — 14.

Nufance. See Highways.

Nocumentum (a Nufance) is where one makes any Encroachment on the King's Lands or the Highways, common Rivers, &c. 2 *Inst.* 272.

And where a Man doth any Thing on his own Ground to the particular Damage of his Neighbour, it is accounted a Nufance.

Men may meet in a peaceable Manner, and with proper Instruments, to remove a *Nufance*, but not in greater Number than are needful for that Purpose.

Upon an Indictment for a Nufance, the Court never admits the Person to a small Fine 'till 'tis removed, and *Affidavit* made thereof, or else certified by two Justices.

Neither ought the Defendant to take any Exceptions to the Indictment till he hath pleaded to it.

Nufances are of several Kinds; to wit, publick and common, or private; I shall instance of some, *viz.* 'Tis a Nufance to erect a Gate cross a Highway, though the Gate is easy to be opened; any Man may break it or cut it. *Cro. Car.* 185. So 'tis to erect a Dam on his own Land, and Part of it on another Man's Land; and therefore the other Person may pull his Part down, though the Owner's Part fall. These Offences are punishable in the Leet; yet stopping a Way to a Common, is a Nufance, for which an Action on the Case lieth, as well as an Affize. 3 *Cro.* 845. *Cantril* and *Church*.

James and
Hayward, S. C.
Tho' my Lord
Coke was of a
contrary Opin-
ion himself,
yet there were
three Judges
against him,
That it was a
Nufance and
abatable.

Annoyances on Highways, &c. which affect the Publick in general are Common Nufances, for which Indictments lie; and Private Nufances are such as affect private Persons, and for such, Indictments or Actions at Law will lie.

The End of the First Volume.

